DOCUMENT RESUME

ED 414 719 EF 005 001

TITLE	Selected Laws Relating to the Construction and Repair of Public School Facilities in North Carolina.
INSTITUTION	North Carolina State Dept. of Public Instruction, Raleigh.
PUB DATE	1997-02-00
NOTE	73p.
AVAILABLE FROM	North Carolina State Board of Education, 301 N. Wilmington St., Raleigh, NC 27601-2825.
PUB TYPE	Legal/Legislative/Regulatory Materials (090)
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	Bids; Capital; *Educational Facilities; Elementary Secondary Education; *Laws; School Buildings; *School Construction; *School Funds; School Taxes; *State Legislation; State Regulation
IDENTIFIERS	*North Carolina

ABSTRACT

Schools in North Carolina are governed by numerous laws pertaining to construction and repair. A selection of these laws is presented. Financial concerns constitute the bulk of these statutes, covering areas such as bids (financial outlay, advertisement, rejecting bids, and withdrawing bids); sources of state funds; the selling or buying of school property; bonds required; capital outlay funds; general loan information such as loan sources, loan terms, securing and paying loans the issuance of bonds, and the computer loan revolving fund; special appropriations; grants; and budgetary parameters. Other statutes dealing with school construction include architectural and engineering services such as specific guidelines on conflict of interest and compliance; basic education programs; classroom sizes; the duties of local boards, of superintendents, of principals, and of teachers; inspections; energy savings contracts; lease properties; long-range plans for school facility needs; the North Carolina Historical Commission; public building contracts; facilities guidelines; repair of damage to school property; replacement of buildings; fire safety and prevention; and vocational programs affiliated with schools. Case notes, which explicate some of these laws, are also included. (RJM)

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SELECTED LAWS

Relating to the Construction and Repair of Public School Facilities in North Carolina

ED xxx xxx

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§ 44A-26. Bonds required.

(a) When the total amount of construction contracts awarded for any one project exceeds one hundred thousand dollars ($100,000) a performance and payment bond as set forth in (1) and (2) is required by the contracting body from any contractor with a contract more than fifteen thousand dollars ($15,000). In the discretion of the contracting body, a performance and payment bond may be required on any construction contract as follows:

(1) A performance bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. Such bond shall be solely for the protection of the contracting body which awarded the contract.

(2) A payment bond in the amount of one hundred percent (100%) of the construction contract amount, conditioned upon the prompt payment for all labor or materials for which a contractor or subcontractor is liable. The payment bond shall be solely for the protection of the persons furnishing materials or performing labor for which a contractor or subcontractor is liable.

(b) The performance bond and the payment bond shall be executed by one or more surety companies legally authorized to do business in the State of North Carolina and shall become effective upon the awarding of the construction contract. (1973, c. 1194, s. 1; 1983, c. 818.)

Local Modifications.---City of Charlotte: 1983, ch. 422.

Effect of Amendments.--- The 1983 amendment, effective Oct. 1, 1983, rewrote the introductory language of subsection (a).

CASE NOTES

Proof that Materials Were Used on Project.---If the supplier in good faith furnished the material for the construction of the project, it is entitled to recover for the materials so furnished. It is not required to prove that the materials were actually used on the project. Noland Co. v. Poovey, 58 N.C. App. 800, 295 S.E.2d 238 (1982).

Submission of Surety's Liability to Jury.---Where there is evidence from which a jury could conclude that the supplier delivered some materials to the job site which it did not in good faith believe were intended for the project, the issue as to the surety's liability on the bond should be submitted to the jury. Noland Co. v. Poovey, 58 N.C. App. 800, 295 S.E.2d 238 (1982).

§ 58-193. Commissioner to inspect State Property; plans submitted.

....No board, commission, superintendent, or other person or persons authorized and directed by law to select plans and erect buildings for the use of the State of North Carolina or any institution thereof, or for the use of any county, city, or incorporated town or school district shall

receive and approve of any plans until they are submitted to and approved by the Commissioner of Insurance of the State as to the safety of the proposed buildings from fire, as well as the protection of the inmate in case of fire.

§ 105-487. Use of additional tax revenue by counties and municipalities.

(a) Except as provided in subsection (c), forty percent (40%) of the revenue received by a county from additional one-half percent (½%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the county and thirty percent (30%) of the revenue received by a county from these taxes in the next 10 fiscal years in which the taxes are in effect in the county may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes.

(b) Except as provided in subsection (c), forty percent (40%) of the revenue received by a municipality from additional one-half percent (½%) sales and use taxes levied under this Article during the first five fiscal years in which the additional taxes are in effect in the municipality and thirty percent (30%) of the revenue received by a municipality from these taxes in the second five fiscal years in which the taxes are in effect in the municipality may be used by the municipality only for water and sewage capital outlay purposes or to retire any indebtedness incurred by the municipality for these purposes.

(c) The Local Government Commission may, upon petition by a county or municipality, authorize a county or municipality to use part or all its tax revenue, otherwise required by subsection (a) or (b) to be used for public schools or water and sewage capital needs, for any lawful purpose. The petition shall be in the form of a resolution adopted by the City Council or Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county or municipality can provide for its public school or water and sewage capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (½%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission shall consider information contained in the petition concerning not only the public school or water and sewage capital needs, but also the other capital needs of the petitioning county or municipality. The Commission may also consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school or water and sewage capital needs of the petitioning county or municipality and the percentage of revenue otherwise restricted by subsection (a) or (b) that may be used by the petitioning county or municipality for any lawful purpose.

Decisions of the Commission allowing counties or municipalities to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) or (b) for any lawful purpose are final and shall continue in effect until the restrictions imposed by those subsections expire. A county or municipality whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(d) For purposes of determining the number of fiscal years in which on-half percent (½%) sales and use taxes levied under this Article have been in effect in a county or municipality, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are

considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.

(e) A county or municipality may expend part or all of the revenue restricted for public school or water and sewage capital needs pursuant to subsections (a) and (b) in the fiscal year in which the revenue is received, or the county or municipality may place part or all of this revenue in the capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statutes. (1983, c. 908, s. 1; 1993, c. 225, ss.1, 3.)

Local Modification.----Burke County: 1985, c. 326.

Effect of Amendments.---Session Laws 1993, c. 255, s. 1, effective July 1, 1993, in subsection (a), substituted "next 10 fiscal years" for "second five fiscal years".

Session Laws 1993, c. 255, s. 3, effective July 1, 1993, in the second sentence of the first paragraph of subsection (c), substituted "of a resolution adopted by the City Council or Board of County Commissioners and transmitted to" for "prescribed by" and deleted "and" from the end; in the third sentence of the first paragraph of subsection (c), added at the beginning "The petition"; in the first sentence of the second paragraph of subsection (c), substituted "shall" for "may" and added at the end "contained in the petition concerning not only the public school or water and sewage capital needs, but also the other capital needs of the petitioning county or municipality"; and in the second sentence of the second paragraph of subsection (c) added at the beginning "The Commission may also consider information".

§ 105-502. Use of additional tax revenue by counties.

(a) Sixty percent (60%) of the revenue received by a county under this Article during the first 16 fiscal years in which the tax is in effect may be used by the county only for public school capital outlay purposes or to retire any indebtedness incurred by the county for these purposes during the period beginning five years prior to the date the taxes took effect.

(b) The Local Government Commission may, upon petition by a county, authorize a county to use part or all of its tax revenue, otherwise required by subsection (a) to be used for public school capital outlay purposes, for any lawful purpose. The petition shall be in the form of a resolution adopted by the Board of County Commissioners and transmitted to the Local Government Commission. The petition shall demonstrate that the county can provide for its public school capital needs without restricting the use of part or all of the designated amount of the additional one-half percent (½%) sales and use tax revenue for these purposes.

In making its decision, the Local Government Commission shall consider information in the petition concerning not only the public school capital needs but also the other capital needs of the petitioning county. The Commission may consider information from sources other than the petition. The Commission shall issue a written decision on each petition stating the findings of the Commission concerning the public school capital needs of the petitioning county and the percentage of revenue otherwise restricted by subsection (a) that may be used by the petitioning county for any lawful purpose.

Decisions of the Commission allowing counties to use a percentage of their tax revenue that would otherwise be restricted under subsection (a) for any lawful purpose are final and shall continue in effect until the restrictions imposed by those subsections expire. A county whose petition is denied, in whole or in part, by the Commission may subsequently submit a new petition to the Commission.

(c) A County may expend part or all of the revenue restricted for public school capital needs pursuant to subsection (a) in the fiscal year in which the revenue is received, or the county may place part or all of this revenue in a capital reserve fund and shall specifically identify this revenue in accordance with Chapter 159 of the General Statues.

(d) For purposes of this section in determining the number of fiscal years in which one-half percent (½%) sales and use taxes levied under this Article have been in effect in a county, these taxes are considered to be in effect only from the effective date of the levy of these taxes and are considered to be in effect for a full fiscal year during the first year in which these taxes were in effect, regardless of the number of months in that year in which the taxes were actually in effect.
(1985 (Reg. Sess., 1986), c. 906, s. 1; 1987, c. 622, s. 11; 1993, c. 255, ss. 2,4.)

Effect of Amendments.----Session Laws 1993, c. 255, effective July 1, 1993, in s. 2, in subsection (a) substituted "16 fiscal years" for "11 fiscal years"; and in s. 4, in subsection (b), in the first sentence of the first paragraph, substituted "of a resolution adopted by the Board of County Commissioners and transmitted to" for "prescribed by" and deleted "and" from the end and in the second sentence added at the beginning "The petition"; and in subsection (b), in the first sentence of the second paragraph, substituted "shall consider information in the petition concerning not only the public school capital needs but also the other capital needs of the petitioning county" for "may", and in the second sentence added "The Commission may".

ARTICLE 5.
Local Boards of Education.

§ 115C-47(28a). Powers and duties generally.

(28a) To Enter Guaranteed Energy Savings Contracts for Energy Conservation Measures.---Local boards may purchase energy conservation measures by guaranteed energy savings contracts pursuant to Part 2 of Article 3B of Chapter 143 of the General Statutes.

ARTICLE 8.
General Education.

Part 1. Courses of Study

§ 115C-81(b). Basic Education Program.

(b) The Basic Education Program shall include course requirements and descriptions similar in format to materials previously contained in the standard course of study and it shall provide:

(1) A core curriculum for all students that takes into account the special needs of children and includes appropriate modifications for the learning disabled, the academically gifted, and the students with discipline and emotional problems;
(2) A set of competencies, by grade level, for each curriculum area;
(3) A list of textbooks for use in providing the curriculum;
(4) Standards for student performance and promotion based on the mastery of competencies, including standards for graduation, that take into account children with special needs and, in particular, include appropriate modifications;
(5) A program of remedial education;
(6) Required support programs;
(7) A definition of the instructional day;
(8) Class size recommendations and requirements;
(9) Prescribed staffing allotment ratios;
(10) Material and equipment allotment ratios;
(11) Facilities guidelines that reflect educational program appropriateness, long-term cost efficiency, and safety considerations; and
(12) Any other information the Board considers appropriate and necessary.

The State Board shall not adopt or enforce any rule that requires Algebra I as a graduation standard or as a requirement for a high school diploma for any student whose individualized education program (i) identifies the student as learning disabled in the area of mathematics and (ii) states that this learning disability will prevent the student from mastering Algebra I.

Part 2. Vocational and Technical Education Production Work Activities.

§ 115C-159. Statement of purpose.

It is the intent of the General Assembly that practical work experiences within the school and outside the school, which are valuable to students and which are under the supervision of a teacher, should be encouraged as a part of vocational and technical education instruction in the public secondary schools and middle schools when those experiences are organized and maintained to the best advantage of the vocational programs. Those activities are a part of the instructional activities

in the vocational programs and are not to be construed as engaging in business. Those services, products, and properties generated through these instructional activities are exempt from the requirements of G.S. 115C-518; the local board shall adopt rules for the disposition of these services, products, and properties. Local boards of education may use available financial resources to support that instruction. (1977, c. 490, s. 4; 1981, c. 423, s. 1; 1983, c. 750, s. 2; 1985, c. 479, s. 32; 1987, c. 738, s. 184; 1993, c. 180, s. 3.)

ARTICLE 13.
Community Schools Act.

§ 115C-204. Purpose of Article.

The purpose of this Article is to encourage greater community involvement in the public schools and greater community use of public school facilities. To this end it is declared to be the policy of this State:

(1) To provide for increased involvement by citizens in their local schools through community schools advisory councils.

(2) To assure maximum use of public school facilities by the citizens of each community in this State.

It is further declared to be the policy of this State that, to the extent sufficient funds are made available, each local board of education shall comply with the provisions of this Article. (1977, c. 682; 1981, c. 423, s. 1.)

ARTICLE 18.
Superintendents.

§ 115C-276(c). Duties of superintendent.

(c) To Monitor Condition of School Plants.---It shall be the duty of every superintendent to visit the schools of his unit, to keep his board of education informed at all times as to the condition of the school plants in his administrative unit, and to make immediate provisions to remedy any unsafe or unsanitary conditions existing in any school building.

ARTICLE 19.
Principals and Supervisors.

§ 115C-288(d). Powers and duties of principal.

(d) To Conduct Fire Drills and Inspect for Fire Hazards.----It shall be the duty of the principal to conduct a fire drill during the first week after the opening of school and thereafter at least one fire drill each school month, in each building in his charge, where children are assembled. Fire drills shall

include all pupils and school employees, and the use of various ways of egress to simulate evacuation of said buildings under various conditions, and such other regulations as shall be prescribed for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education. A copy of such regulations shall be kept posted on the bulletin board in each building.

It shall be the duty of each principal to inspect each of the buildings in his charge at least twice each month during the regular school session. This inspection shall include cafeterias, gymnasiums, boiler rooms, storage rooms, auditoriums and stage areas as well as all classrooms. This inspection shall be for the purpose of keeping the buildings safe from the accumulation of trash and other fire hazards.

It shall be the duty of the principal to file two copies of a written report once each month during the regular school session with the superintendent of his local school administrative unit, one copy of which shall be transmitted by the superintendent to the chairman of the local board of education. This report shall state the date the last fire drill was held, the time consumed in evacuating each building, that the inspection has been made as prescribed by law and such other information as is deemed necessary for fire safety by the Commissioner of Insurance, the Superintendent of Public Instruction and the State Board of Education.

It shall be the duty of the principal to minimize fire hazards pursuant to the provisions of G.S. 115C-525.

(f) To protect School Property. - The principal shall protect school property as provided in G.S. 115C-523.

ARTICLE 20.
Teachers.

§ 115C-301. Allocation of teachers; class size.

(a) Request for Funds.----The State Board of Education, based upon the reports of local boards of education and such other information as the State Board may require from local boards, shall determine for each local school administrative unit the number of teachers and other instructional personnel to be included in the State budget request.

(b) Allocation of Positions.----The State Board of Education is authorized to adopt rules to allot instructional personnel and teachers, within funds appropriated.

(c) Maximum Class Size.----The average class size for each grade span in a local school administrative unit shall at no time exceed the funded allotment ratio of teachers to students. At the end of the second school month and for the remainder of the school year, the size of an individual class shall not exceed the allotment ratio by more than three students. At no time may the General Assembly appropriate funds for higher unit-wide class averages than those for which State funds were provided during the 1984-85 school year.

(d) Maximum Teaching Load.----Students shall be assigned to classes so that from the 15th day of the school year through the end of the school year the number of students for whom teachers in grades 7 through 12 are assigned teaching responsibilities during the course of the day is no more

than 150 students, except as provided in subsection (g) of this section.

(e) Alternative Maximum Class Sizes.----The State Board of Education, in its discretion, may set higher maximum class sizes and daily teaching loads for classes in music, physical education, and other similar subjects, so long as the effectiveness of the instructional programs in those areas is not thereby impaired.

(f) Second Month Reports.----At the end of the second month of each school year, each local board of education, through the superintendent, shall file a report for each school within the school unit with the State Board of Education. The report shall be filed in a format prescribed by the State Board of Education and shall include the organization for each school, the duties of each teacher, the size of each class, the teaching load of each teacher, and such other information as the State Board may require. As of February 1 each year, local boards of education, through the superintendent, shall report all exceptions to individual class size and daily teaching load maximums that occur at that time.

(g) Waivers and Allotment Adjustments.----Local boards of education shall report exceptions to the State Board of Education as provided in G.S. 115C-47(10), and shall request allotment adjustments or waivers from the standards set out above. Within 45 days of receipt of reports, the State Board of Education, within funds available, may allot additional positions or grant waivers for the excess class size or daily load.

(1) If the exception resulted from (i) exceptional circumstances, emergencies, or acts of God, (ii) large changes in student population, (iii) organizational problems caused by remote geographic location, or (iv) classes organized for a solitary curricular area, and

(2) If the local board cannot organizationally correct the exception.

All allotment adjustments and waivers submitted under this provision shall be reported to the Director of the Budget and to the General Assembly by May 15 of each year.

(h) State Board Rules.----The State Board of Education shall adopt rules necessary for the implementation of class size and teaching load provisions.

(i) Penalty for Noncompliance.----If the State Board of Education determines that a local superintendent has willfully failed to comply with the requirements of this section, no State funds shall be allocated to pay the superintendent's salary for the period of time the superintendent is in noncompliance. (1955, c. 1372, art. 6, s. 6; 1963, c. 688, s. 3; 1965, c. 584, s. 6; 1969, c. 539; 1973, c. 770, ss. 1, 2; 1975, c. 965, s. 3; 1977, c. 1088, s. 4; 1981, c. 423, s. 1; 1983 (Reg. Sess., 1984), c. 1034, ss. 12, 13; 1985, c. 479, s. 55(b)(3)b; 1987, c. 738, s. 181; 1987 (Reg. Sess., 1988), c. 1025, s. 15; c. 1086, s. 89(a).)

Cross References.----As to the allotment of classified principals, see § 115C-284.

§ 115C-307(h). Duties of teachers.

(h) To Take Care of School Buildings. - It shall be the duty of every teacher to instruct children in proper care of property and to exercise due care in the protection of school property, in accordance with the provisions of G.S. 115C-523.

ARTICLE 31.
The School Budget and Fiscal Control Act.

Part 2. Budget.

§ 115C-426(f). Uniform budget format.

(f) The capital outlay fund shall include appropriations for:

(1) The acquisition of real property for school purposes, including but not limited to school sites, playgrounds, athletic fields, administrative headquarters, and garages.

(2) The acquisition, construction, reconstruction, enlargement, renovation, or replacement of buildings and other structures, including but not limited to buildings for classrooms and laboratories, physical and vocational educational purposes, libraries, auditoriums, gymnasiums, administrative offices, storage, and vehicle maintenance.

(3) The acquisition or replacement of furniture and furnishings, instructional apparatus, data-processing equipment, business machines, and similar items of furnishings and equipment.

(4) The acquisition of school buses as additions to the fleet.

(5) The acquisition of activity buses and other motor vehicles.

(6) Such other objects of expenditure as may be assigned to the capital outlay fund by the uniform budget format.

The cost of acquiring or constructing a new building, or reconstructing, enlarging, or renovating an existing building, shall include the cost of all real property and interests in real property, and all plants, works, appurtenances, structures, facilities, furnishings, machinery, and equipment necessary or useful in connection therewith; financing charges; the cost of plans, specifications, studies, reports, and surveys; legal expenses; and all other costs necessary or incidental to the construction, reconstruction, enlargement, or renovation.

No contract for the purchase of a site shall be executed nor any funds expended therefor without the approval of the board of county commissioners as to the amount to be spent for the site; and in case of a disagreement between a board of education and a board of county commissioners as to the amount to be spent for the site, the procedure provided in G.S. 115C-431 shall, insofar as the same may be applicable, be used to settle the disagreement.

Appropriations in the capital outlay fund shall be funded by revenues made available for capital outlay purposes by the State Board of Education and the board of county commissioners, supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 115C-511, the proceeds of the sale of capital assets, the proceeds of claims against fire and casualty insurance policies, and other sources.

§ 115C-426.2. Joint planning.

In order to promote greater mutual understanding of immediate and long-term budgetary issues and constraints affecting public schools and county governments, local boards of education and boards of county commissioners are strongly encouraged to conduct periodic joint meetings during each fiscal year. In particular, the boards are encouraged to assess the school capital outlay needs, to develop and update a joint five-year plan for meeting those needs, and to consider this plan in the preparation and approval of each year's budget under this Article. (1995 (Reg. Sess., 1996). c. 666. s. 2.)

Part 3. Fiscal Control.

§ 115C-441(c1). Budgetary accounting for appropriations.

(c1) Continuing Contracts for Capital Outlay.---An administrative unit may enter into a contract for capital outlay expenditures, some portion or all of which is to be performed and/or paid in ensuing fiscal years, without the budget resolution including an appropriation for the entire obligation, provided:

(i) The budget resolution includes an appropriation authorizing the current fiscal year's portion of the obligation;

ii) An unencumbered balance remains in the appropriation sufficient to pay in the current fiscal year the sums obligated by the transaction for the current fiscal year; and

(iii) Contracts for capital outlay expenditures are approved by a resolution adopted by the board of county commissioners, which resolution when adopted shall bind the board of county commissioners to appropriate sufficient funds in ensuing fiscal years to meet the amounts to be paid under the contract in those years.

ARTICLE 32.
Loans from State Literary Fund.

§ 115C-458. Loans by State Board from State Literary Fund.

The State Literary Fund includes all funds derived from the sources enumerated in Sec. 6, Article IX, of the Constitution, and all funds that may be hereafter so derived, together with any interest that may accrue thereon. This Fund shall be separate and distinct from other funds of the State.

The State Board of Education, under such rules and regulations as it may deem advisable, not inconsistent with the provisions of this Article, may make loans from the State Literary Fund to the counties for the use of local boards of education under such rules and regulations as it may adopt and according to law for the purpose of aiding in the erection and equipment of school plants,

maintenance buildings and transportation garages. No warrant for the expenditure of money for such purposes shall be issued except upon the order of the Superintendent of Public Instruction with the approval of the State Board of Education. (1955, c. 1372, art. 11, s. 1; 1971, c. 704, s. 11; c. 1096; 1981, c. 423, s. 1.)

§ 115C-459. Terms of loans.

Loans made under the provisions of this Article shall be payable in 10 installments, shall bear interest at a uniform rate determined by the State Board of Education not to exceed eight percent (8%), payable annually, and shall be evidenced by the note of the county, executed by the chairman, the clerk of the board of county commissioners, and the chairman and secretary of the local board of education, and deposited with the State Treasurer. The first installment of such loan, together with the interest on the whole amount then due, shall be paid by the local board on the tenth day of February after the tenth day of August subsequent to the making of such loan, and the remaining installments, together with the interest, shall be paid on the tenth day of February of each subsequent year until all shall have been paid. (1955, c. 1372, art. 11, s. 2; 1971, c. 1094; 1981, c. 423, s. 1; 1983, c. 477.)

§ 115C-460. How secured and paid.

At the January meeting of the board of education, before any installment shall be due on the next tenth day of February, the local board of education shall set apart out of the school funds an amount sufficient to pay such installment and interest to be due, and shall issue its order upon the treasurer of the county or city school fund therefor, who, prior to the tenth day of February, shall pay over to the State Treasurer the amount then due. Upon failure of any local school administrative unit to pay any installment of principal or interest, or any part of either, when due, the State Treasurer, upon demand of the State Board of Education, shall bring action against the local board of education and board of county commissioners to compel the levy and collection of sufficient taxes to pay said installment of principal and accrued interest. The State Board of Education may accept payment of any or all of said notes and the interest accrued thereon before maturity. (1955, c. 1372, art. 11, s. 3; 1981, c. 423, s. 1.)

§ 115C-461. Loans by county board to school districts.

The county board of education, from any sum borrowed under the provisions of this Article, may make loans only to districts that shall have levied a local tax sufficient to repay the installments and interest on said loan for the purpose of building schoolhouses in the district, and the amount so loaned to any district shall be payable in 10 annual installments, with interest thereon at the same rate the county board of education is paying, payable annually. Any amount loaned under the provisions of this law shall be a lien upon the total local tax funds produced in the district. Whenever the local

taxes may not be sufficient to pay the installments and the interest, the county board of education must supply the remainder out of the current expense fund, and shall make provision for the same when the county budget is made and presented to the commissioners. (1955, c. 1372, art. 11, s. 4; 1981, c. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 24.)

Editor's Note.—Session Laws 1985 (Reg. Sess., 1986), c. 975, which deleted a former second paragraph of this section, relating to written petition of a majority of the school committee asking for a loan, and a lien upon local taxes for repayment of the same, provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

§ 115C-462. State Board of Education authorized to accept funding or refunding bonds of counties for loans; approval by Local Government Commission.

In any case where a loan has heretofore been made from the State Literary Fund or from any special building fund of the State to a county and such county has heretofore or shall hereafter authorize the issuance of bonds for the purpose of funding or refunding interest on or the principal of all or a part of the notes evidencing such loan, the State Board of Education is hereby authorized to accept funding or refunding bonds or notes of such county in payment of interest on or the principal of the notes evidencing such loan: Provided, however, that the issuance of such funding or refunding bonds shall have been approved by the Local Government Commission. (1955, c. 1372, art. 11, s. 5; 1981, c. 423, s. 1.)

§ 115C-463. Issuance of bonds as part of general refunding plan.

In any case where the funding or refunding of interest on or the principal of such notes shall constitute a part of a refunding plan or program of the county, and the terms of such funding or refunding shall be accepted by a sufficient number of the holders of the county's obligation to put same into effect, the State Board of Education may authorize the acceptance of such funding or refunding bonds or notes upon the same terms and conditions, both as to principal and interest, as have been agreed upon by a sufficient number of the other holders of the county's obligations to put same into effect. (1955, c. 1372, art. 11, s. 6; 1981, c. 423, s. 1.)

§ 115C-464. Validating certain funding and refunding notes of counties.

The notes of any county held by the State Board of Education which were heretofore issued in exchange for and for the purpose of refunding and retiring notes evidencing loans made from the State Literary Fund pursuant to Article 24 of Chapter 136 of the Public Laws of 1923, or from special building funds pursuant to either Chapter 147 of the Public Laws of 1921, or Article 25 of

Chapter 136 of the Public Laws of 1923, or Chapter 201 of the Public Laws of 1925, or Chapter 199 of the Public Laws of 1927, are hereby declared to be valid existing indebtedness of said county incurred by said county for the maintenance of the school term as required by the Constitution of North Carolina, notwithstanding any lack of authority for the issuance of said notes or error or omission or irregularity in the acts done or proceedings taken to provide for their issuance, and said notes held by the State Board of Education are hereby authorized to be refunded with bonds issued pursuant to the County Finance Act, being Chapter 81 of the Public Laws of 1927, as amended. (1955, c. 1372, art. 11, s. 7; 1971, c. 704, s. 12; 1981, c. 423, s. 1.)

§ 115C-465. Special appropriation from fund.

The State Board of Education may annually set aside and use out of the funds accruing in interest to the State Literary Fund, a sum not exceeding seventeen thousand five hundred dollars ($17,500) to be used for giving directions in the preparation of proper plans for the erection of school buildings in providing inspection of such buildings as may be erected in whole, or in part, with money borrowed from said fund, and such other purposes as said Board may determine to secure the erection of a better type of school building and better administration of said fund. (1955, c. 1372, art. 11, s. 8; 1981, c. 423, s. 1.)

§ 115C-466. Loans not granted in accordance with § 115C-458.

The State Board of Education, under such rules and regulations as it may adopt, may make loans from the State Literary Fund to any local board of education, when the State Board of Education finds as a fact that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115C-458, for the purpose of aiding in the erection and equipment of public school plants. Such a loan shall not constitute a credit obligation of the county. No warrant for the expenditure of money for a loan authorized under the provisions of this section shall be issued except upon the approval of the State Board of Education, and after a finding of fact by said Board that it is not practicable for a loan to be granted in accordance with the provisions of G.S. 115C-458, and that a dire emergency exists in the local school administrative unit applying for such loan. Loans made under the provisions of this section shall be made in accordance with the terms specified in G.S. 115C-459 and shall be evidenced by the note of the local board of education, executed by the chairman and the secretary of said board. The first installment of such loan, together with the interest then due, shall be paid by the local board of education on or before the tenth day of June in the fiscal year following the fiscal year in which the loan was made, and succeeding installments, together with accrued interest, shall be paid one each on or before the tenth day of June of each successive fiscal year until all amounts due on said loan shall have been paid. The provisions of G.S. 115C-460 shall not apply to loans made pursuant to the provisions of this section. (1959, c. 227; c. 764, s. 2; 1981, c. 423, s. 1.)

§ 115C-467. Pledge of nontax revenues to repayment of loans from State Literary Fund.

Any local board of education obtaining a loan from the State Literary Fund under the provisions of G.S. 115C-466 may, with the approval of the board of county commissioners, pledge to the repayment of such loan any available nontax revenues, including but not limited to, fines, penalties, and forfeitures. (1959, c. 764, s. 1; 1981, c. 423, s. 1.)

ARTICLE 32B.
Computer Loan Revolving Fund.

§ 115C.472.5. Creation of the Fund; administration.

(a) The Department of Public Instruction shall administer the Computer Loan Revolving Fund. The Fund shall be used to provide loans to local school administrative units to enable them to purchase computer equipment to implement the Uniform Education Reporting System in accordance with the standards adopted by the State Board of Education pursuant to G.S. 115C-12(18).

(b) A loan shall be for the actual amount of the equipment up to a maximum to be determined by the Superintendent.

(c) Loans shall be evidenced by notes made payable to the Department of Public Instruction. The rate, term, and other conditions of the note shall be determined in accordance with uniform policies established by the Superintendent.

(d) The Department of Public Instruction shall report to the Information Resource Management Commission, the Joint Legislative Commission on Governmental Operations, the Fiscal Research Division, and the State Government Performance Audit Committee on an annual basis on all loans made from the fund. (1991 (Reg. Sess., 1992), c. 1044, s. 23(a).)

Editor's Note.—Session Laws 1991 (Reg. Sess., 1992), c. 1044, which enacted this article, in s. 23(b) provides: "There is appropriated from the State Literary Fund to the Department of Public Education the sum of one million five hundred thousand dollars ($1,500,000) for the 1992-93 fiscal year for the Computer Loan Revolving Fund created in subsection (a) of this section.

"This section shall become effective only to the extent that funds are available in the State Literary Fund in addition to the funds in the amount of one million dollars ($1,000,000) appropriated in Section 65 of Chapter 900 of the 1991 Session Laws."

ARTICLE 34A.
Critical School Facility Needs Fund.

§ 115C-489.1. Creation of Fund; administration.

(a) There is created the Critical School Facility Needs Fund.

(b) On or before January 15, 1988, the Secretary of Revenue shall estimate the amount of additional tax revenue that will be collected during the twelve months ending June 30, 1988, as a result of Section 9 of the School Facilities Finance Act of 1987. The Secretary shall, prior to February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund, an amount equal to that estimate. These funds shall be drawn from individual income tax net collections received by the Department of Revenue under Division II of Article 4 of Chapter 105 of the General Statutes.

The Secretary of Revenue shall, on or before February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of forty million dollars ($40,000,000). These funds shall be drawn from sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes.

Effective July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of two million five hundred thousand dollars ($2,500,000). These funds shall be drawn from the corporate income tax collections received by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes.

All funds deposited in the Critical School Facility Needs Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the State Board of Education. Monies in the Fund shall be used only for the purposes specified in this Article. (1987, c. 622, s. 13; 1989 (Reg. Sess., 1990), c. 1066, s. 28(c).)

Editor's Note.—Session Laws 1987, c. 622, which enacted this section, in s. 16 provided: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 28, which amended subsection (b), provided in subsection (d) that the amendment to (b) would become effective July 1, 1990, and would expire June 30, 1991. Subdivision (b) is set out above as it read prior to amendment by Session Laws 1989 (Reg. Sess., 1990), c. 1066.

§ 115C-489.2. Grants from the Fund.

(a) The board of education and the boards of county commissioners of the county in which the

local school administrative unit is located in whole or in part shall apply jointly for a grant from the Fund to meet a particular critical need in the local school administrative unit. Grants may be made only for projects that meet the statewide school facility minimum standards adopted by the State Board of Education pursuant to G.S. 115C-489.3.

The application shall contain information on how the critical need for which funds are requested would be met and how much State money is required for the project. The application shall also include an analysis of the school facility needs of the county and a long-range plan for meeting those needs.

At the request of a board of county commissioners or a local board of education, the State Board of Education shall provide technical assistance in facility planning to a local school administrative unit and a county preparing an application for a grant from the Fund.

(b) The State Board of Education shall make grants from the Fund based on the grant priority list established in 1988 by The Commission on School Facility Needs until the next 11 local school administrative units on that priority list are funded.

Local Modification.---Edgecombe and Nash Counties and local school administrative units located in those counties: 1987, c. 813, s. 18.2.

Editor's Note.---Session Laws 1987, c. 813, which substituted "sales for "sale tax" in subdivision (b)(2), provided in s. 25: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Note.---Repeal of the Critical School Facility Needs Fund.---Effective 30 days after the last local school administrative unit on the priority list established in 1988 by The Commission on School Facility Needs is funded under G.S. 115C-489.2, Article 34A of chapter 115C of the General Statutes is repealed. Any unexpended funds in the Critical School Facility Needs Fund, as provided for in G.S. 115C-489.1, which is repealed by this section, are transferred to the Public School Building Capital Fund created in G.S. 115C-546.1.

ARTICLE 37.
School Sites and Property.

§ 115C-517. Acquisition of sites.

Local boards of education may acquire suitable sites for schoolhouses in other school facilities either within or without the local school administrative unit; but no school may be operated by a local school administrative unit outside its own boundaries, although other school facilities such as repair shops, may be operated outside the boundaries of the local school administrative unit. Whenever any such board is unable to acquire or enlarge a suitable site or right-of-way for a school, school building, school bus garage or for a parking area or access road suitable for school buses or

for other school facilities by gift or purchase, condemnation proceedings to acquire same may be instituted by such board under the provisions of Chapter 40A of the General Statutes, and the determination of the local board of education of the land necessary for such purposes shall be conclusive. (1955, c. 1335; c. 1372, art. 15, s. 1; 1957, c. 683; 1969, c. 516; 1971, c. 290; 1981, c. 423, s. 1; c. 1127, s. 78; 1955, c. 199, s.1.)

Local Modifications.---Charlotte-Mecklenburg County School Administrative Unit: 1985, c.229.

Effect of Amendments.---The 1995 amendment, effective June 8, 1995, deleted "Provided, that not more than a total of 50 acres shall be acquired by condemnation for any one site for a schoolhouse or other school facility as aforesaid" from the end of the section and made a related change.

CASE NOTES

Editor's Note.---*The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Constitutionality.---Former § 115-125, similar to this section, did not violate the requirements of just compensation and due process provided by U.S. Const., Amend. XIV. Doby v. Brown, 135 F. Supp. 584 (M.D.N.C. 1955), aff'd, 232 F.2d 504 (4th Cir.), cert. denied, 352 U.S. 837, 77 S. Ct. 57, 1 L. Ed. 2d 55 (1956).

History of Section.---See Board of Educ. v. Forrest, 190 N.C. 753, 130 S.E. 621 (1925).

Discretion of School Authorities.---The question of changing the location of a schoolhouse, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts, unless it is in violation of some provision of the law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950); Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

While school authorities have the discretionary power to select sites for new schools and to change the location of existing schools, their action in this regard may be enjoined when it is without authority of law, or when the selection of a proposed site is so clearly unreasonable as to amount to a manifest abuse of their discretion. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

The advisability of taking property for public school use is a matter committed to the sound discretion of the petitioner, with the exercise of which neither the respondents nor the courts can interfere. Burlington City Bd. of Educ. v. Allen, 243 N.C. 520, 91 S.E.2d 180 (1956).

The board of education determines whether new school buildings are needed and, if so, where they shall be located. Such decisions are vested in the sound discretion of the board, and its discretion with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

County board of education had the discretion to determine what land constituted a "suitable site" to construct its athletic facilities and what land was "necessary" to construct its athletic facilities.

The board had authority to condemn land to be used as wetlands mitigation and a source of fill as necessary to building athletic facilities in an environmentally sensitive area. Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995).

The courts are bound by the discretionary decision of a local board of education in selecting and determining the land necessary to construct a school, school building, school bus garage, a parking area, an access road suitable for school buses or "other school facilities" unless that decision is an arbitrary abuse of discretion or disregard of law. Dare County Bd. of Educ. v. Sakaria, 118 N.C. App. 609, 456 S.E.2d 842 (1995).

Facts Not Showing Abuse of Discretion.---The fact that the site for a high school selected by the school authorities in a mountainous section of the State could be approached only by a crooked highway and over a narrow bridge, and that there might have been other satisfactory sites for such school, did not compel or support the conclusion that the school authorities abused their discretion in selecting the site. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

Effect of Restrictive Covenants.---A board of education which purchases property for a valid school purpose cannot be enjoined to comply with restrictive covenants requiring that the property be used exclusively for residential purposes, the appropriate remedy for other landowners protected by the covenant being an action to recover damages for the taking of their property rights. Carolina Mills, Inc. v. Catawba County Bd. of Educ., 27 N.C. App. 524, 219 S.E.2d 509 (1975).

Selection of Site on Grounds of County Home.—Former § 1153-9(9) (see now § 1153A-169) did not preclude school authorities from selecting, without advertising, a part of the grounds of a county home for the site of a high school, when its use would not interfere with the use of the remainder of the site for a county home. Brown v. Candler, 236 N.C. 576, 73 S.E.2d 550 (1952).

High School and Elementary School on Adjoining Sites.---A high school and an elementary school may be located on adjoining sites. However, neither site may contain more than 10 (now 50) acres of land, if any part thereof must be obtained by condemnation. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

Where the county board of education selects a site for an elementary school contiguous to its high school site, it may condemn for such elementary school site lands not in excess of 10 (now 50) acres, since the board has the discretionary power to locate the schools on adjoining sites. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

There is no limitation on the acreage which may be purchase or donated for a school site. The limitation applies only where the site, or any part thereof, must be obtained by condemnation. In such cases, the land owned, donated or purchased, together with the adjacent lands to be condemned, shall not exceed 10 (now 50) acres. Wayne County Bd. of Educ. v. Lewis, 231 N.C. 661, 58 S.E.2d 725 (1950).

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Acquisition of Land by Purchase Does Not Affect Right to Condemn Additional Land.---Where a board of education has acquired a tract of land by purchase and because of the nature of the land an additional five acres is required, the board may resort to condemnation for the extra five acres needed, and this right is not nullified by the fact that the board has heretofore acquired some land for the school site by purchase. See opinion of the Attorney General to Mr. W. Earl Britt,

Attorney for Fairmont Board of Education, 40 N.C.A.G. 216 (1969), rendered under former corresponding provisions.

§ 115C-518. Disposition of school property; easements and rights-of-way.

(a) When in the opinion of any local board of education the use of any building site or other real property or personal property owned or held by the board is unnecessary or undesirable for public school purposes, the local board of education may dispose of such according to the procedures prescribed in General Statutes, Chapter 160A, Article 12, or any successor provisions thereto. Provided, when any real property to which the board holds title is no longer suitable or necessary for public school purposes, the board of county commissioners for the county in which the property is located shall be afforded the first opportunity to obtain the property. The board of education shall offer the property to the board of commissioners at a fair market price or at a price negotiated between the two boards. If the board of commissioners does not choose to obtain the property as offered, the board of education may dispose of such property according to the procedure as herein provided. Provided that no State or federal regulations would prohibit such action. For the purposes of this section references in Chapter 160A, Article 12, to the "city," the "council," or a specific city official are deemed to refer, respectively, to the school administrative unit, the board of education, and the school administrative official who most nearly performs the same duties performed by the specified city official. A local board of education may also sell any property other than real property through the facilities of the North Carolina Department of Administration. The proceeds of any sale of real property or from any lease for a term of over one year shall be applied to reduce the county's bonded indebtedness for the school administrative unit disposing of such real property or for capital outlay purposes.

(b) In addition to the foregoing, local boards of education are hereby authorized and empowered, in their sound discretion, to grant easements to any public utility, municipality or quasi-municipal corporations to furnish utility services, with or without compensation except the benefits accruing by virtue of the location of the said public utility, and to dedicate portions of any lands owned by such boards as rights-of-way for public streets, roads or sidewalks, with or without compensation except the benefits accruing by virtue of the location or improvement of such public streets, roads or sidewalks.

(c) Any sale, exchange or lease of real or personal property by any local board of education prior to June 18, 1982, and pursuant to the authority of G.S. 115-126 is hereby validated, ratified and confirmed. (1955, c. 1372, art. 15, s. 2; 1959, c. 324; c. 573, s. 11; 1961, c. 395; 1975, c. 264; c. 879, s. 46; 1977, c. 803; 1981, c. 423, s. 1; 1981 (Reg. Sess., 1982), c. 1216; 1983, c. 731; 1985 (Reg. Sess., 1986), c. 975, s. 22.)

Local Modification.---Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 3; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 3; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 3; Cabarrus: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Carteret: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Chowan: 1993 (Reg. Sess., 1994), c. 655, s. 3; Cleveland: 1995, c. 201, s. 1; Duplin: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Forsyth: 1993 (Reg. Sess., 1994, c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Haywood: 1993 (Reg. Sess., 1994), c. 611, s. 2; Hyde: 1981, c. 877;

Iredell: 1991 (Reg. Sess., 1992), c. 1001, s. 2; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 3; 1993 (Reg. Sess., 1994), c. 623, s. 3; Macon: 1993 (Reg. Sess., 1994), c. 611, s. 2; Nash: 1993 (Reg. Sess., 1994), c. 624, s. 3; Orange: 1993 (Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 3; Richmond: 1991 (Reg. Sess., 1992), c. 898; Rowan: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 4; Stanly: 1991 (Reg. Sess., 1992), c. 848, ss. 2, 3; City of Burlington Board of Education: 1993, c. 277, s. 3; Bladen County Board of Education: 1991 (Reg. Sess., 1992), c. 853; Davie County Board of Education: 1985, c. 18; county of Duplin, town of Kenansville, and Duplin County Board of Education: 1987, c. 50; Graham County Board of Education: 1995, c. 154, s. 2; Hertford County Board of Education: 1985, c. 123, s. 2; New Hanover County Board of Education: 1985 (Reg. Sess., 1986), c. 917; Transylvania County Board of Education: 1983, c. 579; Albemarle City School Administrative Unit: 1985, c. 74.

For provisions regarding Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond and Sampson Counties and local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties, see the editor's note under § 153A-158.1.

Cross References.---For provision exempting services, products, and properties generated through vocational education instructional activities from the requirements of this section, see § 115C-159. As to sale, lease, exchange and joint use of governmental property by State and local governmental units, see § 160A-274.

Editor's Note.---Session Laws 1985 (Reg. Sess., 1986), c. 975, which deleted "district or" preceding "administrative unit" in the sixth sentence of subsection (a), provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

Chapter 115, including § 115-126, referred to in this section, was repealed by Session Laws 1981, c. 423, s. 1, and has been recodified as Chapter 115C.

CASE NOTES

Editor's Note.---*Many of the cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.*

Power to Acquire Land.---Subsection (d) of former § 115-126 did not give the board of education any additional power to acquire land for school purposes. This power was given by §§ 115-27, 115-35(b) and 115-125 (see now §§ 115C-40, 115C-36 and 115C-517). Painter v. Wake County Bd. Of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

There is nothing in the Constitution which prohibits the board of education from exchanging land which it owns for other land for school purposes. Painter v. Wake County Bd. of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

No Claim Would Lie Against Board of Commissioners.---The court did not err in determining complaint failed to state a claim as to the proposed sale of school and its adjacent property; the county board of education, not the board of commissioners, holds all school property and is capable of selling and transferring the same for school purposes; applying this law to the case under review, no claim with respect to disposition of the school property would lie against defendant

board of commissioners. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

If a discrepancy in valuation exists it bears only on the question of abuse of discretion, and any such discrepancy is only one of the factors to be considered in determining whether the board has abused its discretion. Painter v. Wake County Bd. Of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

Burden to Overcome Presumption.---The burden was on plaintiffs to overcome the presumption that the board of education, in proposing an exchange of property, was acting in good faith and in accord with the spirit and purpose of former § 115-126. Painter v. Wake County Bd. Of Educ., 288 N.C. 165, 217 S.E.2d 650 (1975).

Lease of Surplus Lands.—A city school administrative unit contemplated by § 115-4 (see now § 115C-66) was a governmental agency separate and distinct from the city, and such administrative unit, having acquired more land than presently needed for school purposes, had legislative authority to lease the surplus, either for a public or a private purpose, so long as it exercised its discretion in good faith. Where lease stipulated that use was to be for a public or semipublic purpose, the law would presume that the parties intended and contemplated use of the property without unlawful discrimination because of race, religion or other illegal classification. State v Cooke, 248 N.C. 485, 103 S.E.2d 846 (1958), appeal dismissed, 364 U.S. 177, 80 S. Ct. 1482, 4 L. Ed. 2d 1650, rehearing denied, 364 U.S. 856, 81 S. Ct. 29, 5 L. Ed. 2d 80 (1960).

Delegation of Authority.—Where a chartered school district acquired property by foreclosure of a loan made from its sinking fund, the property thus acquired being in no way connected with the operation of its schools, and the trustees of the district instructed the property committee to consider any offers for the property in excess of a stipulated sum, and delegated "power to act" in the matter, and where the chairman thereafter entered into a contract for the sale of the property for a price in excess of the minimum amount stipulated by the trustees, upon a suit by a taxpayer of the district to restrain conveyance to the purchaser in the contract, it was held that the trustees of the district were without power to delegate authority to sell the school property, and the district was not bound by the contract entered into, and a decree restraining the execution of the contract was proper. Bowles v. Fayetteville Graded Schools, 211 N.C. 36, 188 S.E. 615 (1936).

Statutory Discretion Was Not Withdrawn by Purchase of Facility.—Where plaintiffs alleged that defendants made unauthorized diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purpose of facility, although the sale of the school property may have resulted from the purchase of facility, the Board of Education's statutory discretion to determine that the school property was surplus property no longer needed for school purposes was not withdrawn by its actions with respect to the facility. Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

§ 115C-521. Erection of school buildings.

(a) It shall be the duty of local boards of education to provide classroom facilities adequate to meet the requirements of G.S. 115C-47 (10) and 115C-301. Local boards of education shall submit their long-range plans for meeting school facility needs to the State Board of Education by January 1, 1988, and every five years thereafter. In developing these plans, local boards of education shall

consider the costs and feasibility of renovating old school buildings instead of replacing them.

(b) It shall be the duty of the boards of education of the several local school administrative school units of the State to make provisions for the public school term by providing adequate school buildings equipped with suitable school furniture and apparatus. The needs and the cost of those buildings, equipment, and apparatus, shall be presented each year when the school budget is submitted to the respective tax-levying authorities. The boards of commissioners shall be given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped, and it shall be the duty of the several boards of county commissioners to provide funds for the same.

Upon determination by a local board of education that the existing permanent school building does not have sufficient classrooms to house the pupil enrollment anticipated for the school, the local board of education may acquire and use as temporary classrooms for the operation of the school, relocatable or mobile classroom units, whether built on the lot or not, which units and method of use shall meet the approval of the School Planning Division of the State Board of Education, and which units shall comply with all applicable requirements of the North Carolina State Building Code and of the local building and electrical codes applicable to the area in which the school is located. These units shall also be anchored in a manner required to assure their structural safety in severe weather. The acquisition and installation of these units shall be subject in all respects to the provisions of Chapter 143 of the General Statutes. The provisions of Chapter 87, Article 1, of the General Statutes, shall not apply to persons, firms or corporations engaged in the sale or furnishing to local boards of education and the delivery and installation upon school sites of classroom trailers as a single building unit or of relocatable or mobile classrooms delivered in less than four units or sections.

(c) The building of all new school buildings and the repairing of all old school buildings shall be under the control and direction of, and by contract with, the board of education for which the building and repairing is done. If a board of education is considering building a new school building to replace an existing school building, the board shall not invest any construction money in the new building unless it submits to the State Superintendent and the State Superintendent submits to the North Carolina Historical Commission an analysis that compares the cost and feasibility of building the new building and of renovating the existing building and that clearly indicates the desirability of building the new building. No board of education shall invest any money in any new building until it has (i) developed plans based upon a consideration of the State Board's facilities guidelines, (ii) submitted these plans to the State Board for its review and comments, and (iii) reviewed the plans based upon a consideration of the comments it receives from the State Board. No local board of education shall contract for more money than is made available for the erection of a new building. However, this subsection shall not be construed so as to prevent boards of education from investing any money in buildings that are being constructed pursuant to a continuing contract of construction as provided for in G.S. 115C-441 (c1). All contracts for buildings shall be in writing and all buildings shall be inspected, received, and approved by the local superintendent and the architect before full payment is made therefor. Nothing in this subsection shall prohibit boards of education from repairing and altering buildings with the help of janitors and other regular employees of the board.

In the design and construction of new school buildings and in the renovation of existing school buildings that are required to be designed by an architect or engineer under G. S. 133-1.1, the local

board of education shall participate in the planning and review process of the Energy Guidelines for School Design and Construction that are developed and maintained by the Department of Public Instruction and shall adopt local energy-use goals for building design and operation that take into account local conditions in an effort to reduce the impact of operation costs on local and State budgets. In the design and construction of new school facilities and in the repair and renovation of existing school facilities, the local board of education shall consider the placement and design of windows to use the climate of North Carolina for both light and ventilation in case of power shortages. A local board shall also consider the installation of solar energy systems in the school facilities whenever practical.

In the case of any school building erected, repaired, or equipped with any money loaned or granted by the State to any local school administrative unit, the State Board of Education, under any rules as it may deem advisable, may retain any amount not to exceed fifteen percent (15%) of the loan or grant, until the completed buildings, erected or repaired, in whole or in part, from the loan or grant funds, shall have been approved by a designated agent of the State Board of Education. Upon approval by the State Board of Education, the State Treasurer may pay the balance of the loan or grant to the treasurer of the local school administrative unit for which the loan or grant was made.

(d) Local boards of education shall make no contract for the erection or repair of any school building unless the site upon which it is located is owned in fee simple by the board: Provided, that the board of education of a local school administrative unit, with the approval of the board of county commissioners may appropriate funds to aid in the establishment of a school facility and the operation thereof in an adjoining local school administrative unit when a written agreement between the boards of education of the administrative units involved has been reached and the same recorded in the minutes of the boards, whereby children from the administrative unit making the appropriations shall be entitled to attend the school so established.

In all cases where title to property has been vested in the trustees of a special charter district which has been abolished and has not been reorganized, title to the property shall be vested in the local board of education of the county embracing the former special charter district. (1955, c. 1372, art. 15, ss 5-7; 1969, c. 1022, s. 1;1981, c. 423, s. 1; c. 638, s. 1; 1983, c. 761, s. 93; 1985, c. 783, s. 3; 1987, c. 622, s. 14; 1993, c. 416, s. 1; c. 465, s. 1; 1993 (Reg. Sess., 1994), c. 775, s. 6; 1995, c. 8, s. 1.)

(e) The State Board of Education shall establish within the Department of Public Instruction a central clearinghouse for access by local boards of education that may want to use a prototype design in the construction of school facilities. The State Board shall compile necessary publications and a computer database to distribute information on prototype designs to local school administrative units. All architects and engineers registered in North Carolina may submit plans for inclusion in the computer database and these plans may be accessed by any person. The original architect of record or engineer of record shall retain ownership and liability for a prototype design. The State Board may adopt rules it considers necessary to implement this subsection.

Local Modification. ---Ashe: 1993 (Reg. Sess., 1994), c. 622, s. 2; Avery: 1993 (Reg. Sess., 1994), c. 622, s. 2; Brunswick: 1993 (Reg. Sess., 1994), c. 612, s. 2; Chowan: 1993 (Reg. Sess., 1994), c. 655 s. 2; Duplin: 1993, c. 549, ss.1,2; Forsyth: 1993, c. 128, s. 1, 1993 (Reg. Sess., 1994), c. 642, s. 3; Harnett: 1993 (Reg. Sess., 1994), c. 622, s. 2; 1993 (Reg. Sess., 1994), c. 623, s. 2; Lee: 1993 (Reg. Sess., 1994), c. 622, s. 2; 1993 (Reg. Sess., 1994), c. 623, s. 2; Nash: 1993 (Reg. Sess.,

1994), c. 642, s. 3; Orange: 1993 Reg. Sess., 1994), c. 642, s. 3; Pasquotank: 1993 (Reg. Sess., 1994), c. 655, s. 2; Sampson: 1993 (Reg. Sess., 1994), c. 614, s. 3; County of Buncombe County, Buncombe County School Administrative Unit and Asheville City School Administrative Unit: 1983, c. 360; Burke County and Burke County School Administrative Unit: 1983, c. 198; Burke County Board of Education: 1985, c. 230; Lenoir County Board of Education: 1995, c. 200, s. 1; Winston-Salem/Forsyth County Board of Education: 1993, c. 128, s. 1; Duplin: 1993, c. 549, s. 1; Forsyth: 1993, c. 128, s.1.

For provisions regarding Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, Pasquotank, Richmond and Sampson Counties and local boards of education for school administrative units in or for Ashe, Avery, Brunswick, Chowan, Forsyth, Harnett, Haywood, Lee, Macon, Nash, Orange, and Pasquotank Counties, see the editor's note under § 153A-158.1.

Cross References.---As to penalty for school officials having pecuniary interest in school supplies, see §§ 14-236 and 14-237.

Editor's Note.---Session Laws 1987, c. 622, which added the second sentence of subsection (a), provided in s. 16: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1993 (Reg. Sess., 1994), c. 775, which amended this section, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which amended this section, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Effect of Amendments.---The 1993 (Reg. Sess., 1994) amendment, effective July 16, 1994, in the second paragraph of subsection (c) added the last sentence.

The 1995 amendment, effective March 13, 1995, and applicable to cost and feasibility analyses submitted to the State Superintendent on or after that date, inserted "and the State Superintendent submits to the North Carolina Historical Commission" following "to the State Superintendent" in the second sentence of the first paragraph of subsection (c).

CASE NOTES

Editor's Note.---The cases below were decided under corresponding provisions of former Chapter 115 and earlier statutes.

Board of Education Presents Needs to Commissioners.---Each year the board of education surveys the needs of its school system with reference to buildings and equipment. By resolution it presents these needs, together with their costs, to the commissioners, who are given a reasonable time to provide the funds which they, upon investigation, shall find to be necessary for providing their respective units with buildings suitably equipped. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Commissioners to Determine What Expenditures Shall Be Made.---The board of commissioners of the county, and not the board of education, are charged with the duty to determine what expenditures shall be made for the erection, repair and equipment of school buildings in the county. Johnson v. Marrow, 228 N.C. 58, 44 S.E.2d 468 (1947).

The county board of education surveys annually the needs of the county school system in respect to school plant facilities and equipment and by resolution presents its plan to the board of commissioners. Then, and only then, it becomes the duty of the board of commissioners to determine what expenditures, if any, proposed for such purposes by the board of education are necessary. When it determines that funds are necessary for any one or all of the proposed projects, then it must furnish the funds necessary to provide the facilities incorporated in the approved projects. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

The right of the board of commissioners to determine what expenditures shall be made arises when a proposal for the expenditure of funds for school facilities is made by the board of education. Having determined that question and having provided the funds it deems necessary, its jurisdiction ends and the authority to execute the plan of enlargement or improvement reverts to the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

It is the board of commissioners which is charged with the duty of determining what expenditures shall be made for the erection, repairs, and equipment of school buildings in the county. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

But They Cannot Interfere with Authority of Board of Education.---The control of the board of county commissioners over the expenditure of funds for the erection, repair and equipment of school buildings will not be construed so as to interfere with the exclusive control of the schools vested in the county board of education or the trustees of an administrative unit. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949); Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

The commissioners' control over the expenditure of funds for the erection, repair, and equipment of school buildings does not interfere with the exclusive control of the schools which is vested in the county board of education or in the trustees of administrative units. Having determined what expenditures are necessary and possible, and having provided the funds, the jurisdiction of the commissioners ends. The authority to execute the plans is in the board of education. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

All Expenditures Must Be Authorized.---All expenditures for the construction, repair and equipment of school buildings in a county must be authorized by the board of county commissioners, acting in good faith, pursuant to statutory and constitutional authority. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

Expense a Countywide Charge.---It is the duty of the county commissioners, upon information being furnished by the county boards of education, to provide the funds necessary for suitable buildings and proper equipment, and such expenses are a countywide charge. Reeves v. Board of Educ., 204 N.C. 74, 167 S.E. 454 (1933).

Commissioners May Reallocate Proceeds of Bond Issue.---A bond order issued under former § 153-78 set out in detail the estimates and projects for which the funds were proposed to be used in discharge of the constitutional requirement of a six months' school term within the municipal administrative unit. It was held that former § 153-107 did not preclude the board of county commissioners, upon its finding, after investigation, of changed conditions, from reallocating the

proceeds of bonds to different projects upon further finding, after investigation, that such reallocation of the funds was necessary to effectuate the purpose of the bond issue. Atkins v. McAden, 229 N.C. 752, 51 S.E.2d 484 (1949).

But May Not Change Purpose for Which Bonds Were Issued.---Where the county commissioners attempted to change the purpose for which school bonds were issued, such action of the commissioners was held to constitute a clear invasion of the prerogatives of the board of education. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Any change in plan must be initiated by the board of education. Then the board of commissioners, acting in good faith, may, in proper cases, after finding the facts required by statute, determine whether the reallocation of funds or the change in plans is or is not necessary, and approve or disapprove the expenditure of the funds theretofore furnished by it for the execution of the amended plan. Parker v. Anson County, 237 N.C. 78, 74 S.E.2d 338 (1953).

Power of Board of Education Discretionary.---The building of a school is a matter vested by statute in the sound discretion of the county board of education and is not to be restrained by the courts, unless it is in violation of some provision of law, or unless the committee is influenced by improper motives, or there is misconduct on their part. Venable V. School Comm., 149 N.C. 120, 62 S.E. 902 (1908); Pickler v. County Board, 149 N.C. 221, 62 S.E. 901 (1908).

Whether a change should be made in the location of a school, as well as the selection of a site for a new one, is vested in the sound discretion of the school authorities, and their action cannot be restrained by the courts unless it is in violation of some provision of law, or the authorities have been influenced by improper motives, or there has been a manifest abuse of discretion on their part. Feezor v. Siceloff, 232 N.C. 563, 61 S.E.2d 714 (1950).

Courts Cannot Interfere with Discretion of Board of Education Absent Abuse.---The board of education determines, in the first instance, what buildings require repairs, remodeling, or enlarging, whether new schoolhouses are needed, and if so, where they shall be located. Such decisions are vested in the sound discretion of the board of education, and its actions with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law. Dilday v. Beaufort County Bd. of Educ., 267 N.C. 438, 148 S.E.2d 513, 149 S.E.2d 345 (1966).

Money Available for Erection of Building.---Where a county board of education consolidated five existing high schools into one countywide high school with the approval of the State Board of Education, and plans for the new school building were approved by the State Superintendent of Public Instruction, and public moneys for the erection of the building were allocated to the county board of education, equity would not enjoin the county board of education from entering into a contract for the construction of the building on the ground that the county board of commissioners had refused to provide funds for the construction of the building, and that the proposed contract would offend former corresponding section, providing that a county board of education has no authority to contract for the construction of a new schoolhouse costing more than the "money . . . available for its erection." Edwards v. Yancey County Bd. of Educ., 235 N.C. 345, 70 S.E.2d 170 (1952).

Providing Electric Lights.---Under general statutory authority the erection of electric transmission lines to supply school buildings with electric lighting is given to the board of education of a county. But contracts for such work need not be in writing, nor need they be approved by the State Superintendent. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

A former statute similar to subsection (d) of this section did not apply to the erection of electric light wires. It applied only to sites for school buildings; it did not extend to or include the rights-of-way. Conrad v. Board of Educ., 190 N.C. 389, 130 S.E. 53 (1925).

§ 115-523. Care of school property.

It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

Notwithstanding any other provision of law, the parents or legal guardians of any minor are liable for any gross negligence or willful damage or destruction of school property by that minor to the extent of five thousand dollars ($5,000). The Board of Education shall make written demand upon the parent or legal guardian as a prerequisite of bringing suit.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s 7; 1981, c. 423, s. 1; 1985, c. 581, s. 4.)

§ 115C-524. Repair of school property; use of buildings for other than school purposes.

(a) Repair of school buildings is subject to the provisions of G. S. 115C-521(c) and (d).

(b) It shall be the duty of local boards of education and tax-levying authorities, in order to safeguard the investment made in public schools, to keep all school buildings in good repair to the end that all public school property shall be taken care of and be at all times in proper condition for use. It shall be the duty of all principals, teachers, and janitors to report to their respective boards of education immediately any unsanitary condition, damage to school property, or needed repair. All principals, teachers, and janitors shall be held responsible for the safekeeping of the buildings during the school session and all breakage and damage shall be repaired by those responsible for same, and where any principal or teacher shall permit damage to the public school buildings by lack of proper discipline of pupils, such principal or teacher shall be held responsible for such damage. Provided, principals and teachers shall not be held responsible for damage that they could not have prevented by reasonable supervision in the performance of their duties.

Notwithstanding the provisions of G.S. 115C-263 and 115C-264, local boards of education may adopt rules and regulations under which they may enter into agreements permitting non-school groups to use school real and personal property, except for school buses, for other than school

purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property pursuant to such agreements. (1955, c. 1372, art. 15, s. 9; 1957, c. 684; 1963, c. 253; 1981, cu. 423, s. 1; 1985 (Reg. Sess., 1986), c. 975, s. 23; 1991 (Reg. Sess., 1992), c. 900, s. 79(a).)

Editor's Note.---- Session Laws 1985 (Reg. Sess., 1986), c. 975, which deleted "committeemen" following "It shall be the duty of all" at the beginning of the second sentence of the first paragraph of subsection (b), provided in s. 25 that the provisions of the act should not be construed to abolish or in any manner affect any supplemental tax or any local taxing district.

CASE NOTES

This section explicitly precludes liability from attaching to schools when the school facilities are being used for nonschool purposes. Lindler v. Duplin County Bd. of Educ., 108 N.C. App. 757, 425 S.E.2d 465, cert. denied, 333 N.C. 791, 431 S.E.2d 25 (1993).

Day Care Program.---The legislature may constitutionally delegate to the school board the power or authority to maintain a day care program. Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Bd. of Educ., 55 N.C. App. 134, 285 S.E.2d 110 (1981), cert. denied and appeal dismissed, 305 N.C. 300 291, S.E.2d 150 (1982), decided under former § 115-133.

Immunity from Liability.---There is no exception, in cases of active negligence, to the immunity provided by this section. The legislature clearly intended to do more than codify the old common-law rule that if an affirmative act of negligence were committed or the premises were leased in a ruinous condition, a third party injured on school premises would have recourse against the county board of education. Plemmons v. City of Gastonia, 62 N.C. App. 470, 302 S.E.2d 905, cert. denied, 309 N.C. 322, 307 S.E.2d 165, 166 (1983).

A county board of education was immune from liability for injury to a minor who fell from gymnasium bleachers. Plemmons v. City of Gastonia, 62 N.C. App. 470, 302 S.E.2d 905, cert. denied, 309 N.C. 322, 307 S.E.2d 165, 166 (1983).

The county school board's action to recover lost tax dollars expended in removing asbestos from school property was a governmental function exercised in pursuit of a sovereign purpose for the public good on behalf of the State, and the action was not barred by the statute of limitations. Rowan County Bd. of Educ. v. United States Gypsum Co., 87 N.C. App. 106, 359 S.E.2d 814, cert. denied, 321 N.C. 298, 362 S.E.2d 781 (1987).

Quoted in Rowan County Bd. of Educ. v. United States Gypsum Co., 332 N.C. 1, 418 S.E.2d 648 (1992).

§ 115C-525. Fire prevention.

(a) Duty of Principal Regarding Fire Hazards.---The principal of every public school in the State shall have the following duties regarding fire hazards during periods when he is in control of a school:

(1) Every principal shall make certain that all corridors, halls, and tower stairways which are used for exits shall always be kept clear and that nothing shall be permitted to be stored or kept in corridors or halls, or in, on or under stairways that could in any way interfere with the orderly exodus of occupants. The principal shall make certain that all doors used for exits shall be kept in good working condition. During the occupancy of the building or any portion thereof by the public or for school purposes, the principal shall make certain that all doors necessary for prompt and orderly exodus of the occupants are kept unlocked.

(2 Every principal shall make certain that no electrical wiring shall be installed within any school building or structure or upon the premises and that no alteration or addition shall be made in any existing wiring, except with the authorization of the superintendent. Any such work shall be performed by a licensed electrical contractor, or by a maintenance electrician regularly employed by the board of education and approved by the Commissioner of Insurance.

(3) Every principal shall make certain that combustible materials necessary to the curriculum and for the operation of the school shall be stored in a safe and orderly manner.

(4) Every principal shall make certain that all supplies, such as oil rags, mops, etc., which may cause spontaneous combustion, shall be stored in an orderly manner in a well-ventilated place.

(5) Every principal shall make certain that all trash and rubbish shall be removed from the school building daily. No trash or rubbish shall be permitted to accumulate in a school attic, basement or other place on the premises.

(6) Every principal shall cooperate in every way with the authorized building inspector, electrical inspector, county fire marshal or other designated person making the inspections required by G.S. 115C-525(b).

It shall further be the duty of the principal to bring to the attention of the local superintendent of schools the failure of the building inspector, electrical inspector, county fire marshal, or other person to make the inspections required by G.S. 115C-525(b). It shall further be the duty of the principal to call to the attention of the superintendent of schools all recommendations growing out of the inspections, in order that the proper authorities can take steps to bring about the necessary corrections.

(b) Inspection of Schools for Fire Hazards, Removal of Hazards.---Every public school building in the State shall be inspected a minimum of two times during the year in accordance with the following plan: Provided, that the periodic inspections herein required shall be at least 120 days apart.

(1) Each school building shall be inspected to make certain that none of the fire hazards enumerated in G.S. 115C-525(a)(1) through (5) exist, and to ensure that the building and all heating, mechanical, electrical, gas, and other equipment and appliances are properly installed and maintained in a safe and serviceable manner as prescribed by the North Carolina Building Code. Following each inspection, the persons making the inspection shall furnish to the principal of the school a written report of conditions found during inspection, upon forms furnished by the Commissioner of Insurance, and the persons making the inspection shall also furnish a copy of the

report to the superintendent of schools, the superintendent shall keep such copy on file for a period of three years. In addition to the periodic inspections herein required, any alterations or additions to existing school buildings or to school building utilities or appliances shall be inspected immediately following completion.

(2) The board of county commissioners of each county shall designate the persons to make the inspections and reports required by subdivision (1) of this subsection. The board may designate any city or county building inspector, any city or county fire prevention bureau, any city or county electrical inspector, the county fire marshal, or any other qualified persons, but no person shall make any inspection unless he shall be qualified as required by G.S. 153A-351.1 and Section 7 of Chapter 531 of the 1977 Session Laws. Nothing in this section shall be construed as prohibiting two or more counties from designating the same persons to make the inspections and reports required by subdivision (1) of this subsection. The board of county commissioners shall compensate or provide for the compensation of the persons designated to make all such inspections and reports. The board of county commissioners may make appropriations in the general fund of the county to meet the costs of such inspections, or in the alternative the board may add appropriations to the school current expense fund to meet the costs thereof. Provided, that if appropriations are added to the school current expense fund, such appropriations shall be in addition to and not in substitution of existing school current expense appropriations.

(3) It shall be the duty of the Commissioner of Insurance, the Superintendent of Public Instruction, and the State Board of Education to prescribe any additional rules and regulations which they may deem necessary in connection with such inspections and reports for the reduction of fire hazards and protection of life and property in public schools.

(4) It shall be the duty of each principal to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection are immediately removed or corrected, if such removal or correction can be accomplished by the principal. If such removal or correction cannot be accomplished by the principal, it shall be the duty of the principal to bring the matter to the attention of the superintendent.

(5) It shall be the duty of each superintendent of schools to make certain that all fire hazards called to his attention in the course of the inspections and reports required by subdivision (1) of this subsection and not removed or corrected by the principals as required by subdivision (4) of this subsection are removed or corrected, if such removal or correction can be brought about within the current appropriations available to the superintendent. Where any removal or correction of a hazard will require the expenditure of funds in excess of current appropriations, it shall be the duty of the superintendent to bring the matter to the attention of the appropriate board of education, and the board of education in turn shall bring the same to the attention of the board of county commissioners, in order that immediate steps be taken, within the framework of existing law, to remove or correct the hazard.

(c) Liability for Failure to Perform Duties Imposed by G.S. 115C-288 and 115C-525(a) or 115C-525(b).---Any person willfully failing to perform any of the duties imposed by G.S. 115C-288, 115C-525(a) or 115C-525(b) shall be guilty of a Class 3 misdemeanor and shall only be fined not more than five hundred dollars ($500.00) in the discretion of the court. (1957, c. 844; 1959, c. 573, s. 14; 1981, c. 423, s. 1; 1989, c. 681, s. 12; 1993, c. 539, s. 892; 1994, Ex. Sess., c. 24, s. 14(c).)

Editor's Note.---Session Laws 1993, c. 539, which amended this section, in s. 1359, as amended by Session Laws 1994, Extra Session, c. 24, s. 14(c), provides: "This act becomes effective October 1, 1994, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions."

Effect of Amendments.---The 1993 amendment, effective October 1, 1994, and applicable to offenses occurring on or after that date, inserted "Class 3" preceding "misdemeanor" and inserted "only" following "shall" in subsection (c).

§ 115C-538. Inspection of insured public school properties.

The State Board of Education shall provide for periodic inspections for all public school properties in the State of North Carolina insured under the provisions hereof, the said inspections for safety of buildings and particularly school buildings, against the loss or damage from fire and explosions. The inspections shall be the basis for offering such engineering advice as may be thought to be necessary to safeguard the children in the public schools from death and injury from school fires or explosions and to protect said school properties from loss, and the local boards of education shall be required so far as possible, and reasonable, to carry out and put into effect such recommendations in respect thereto as may be made by the State Board of Education. (1955, c. 1372, art. 16, s. 4; 1981, c. 423, s. 1.)

ARTICLE 38A
Public School Building Capital Fund.

§ 115C-546.1 Creation of Fund; administration.

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) Each calendar quarter, the Secretary of Revenue shall remit to the State Treasurer for credit to the Public School Building Capital Fund an amount equal to two thirty-firsts (2/31) of the net collections received during the previous quarter by the Department of Revenue under G.S. 105-130.3. All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the Office of State Budget and Management. (1987, c.

622, s. 12; c. 813, s. 20; 1989 (Reg. Sess., 1990), c. 1066, s. 28(b); 1991, c. 689, s. 260.)

Editor's Note.---Session Laws 1987, c. 622, which enacted this section, in s. 16 provided: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1987, c. 813, which substituted "October 1, 1987" for "September 1, 1987" and "July 31, 1988" for "June 30, 1988" near the beginning of subsection (b), provided in s. 25: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 28, which amended subsection (b), provided in subsection (d) that the amendment to subsection (b) would become effective July 1, 1990, and would expire June 30, 1991. Subsection (b) is set out above as it reads prior to amendment by Session Laws 1989 (Reg. Sess., 1990), c. 1066, s. 28, but as amended by Session Laws 1991, c. 689, s. 260.

CASE NOTES

Plaintiffs Should Have Sought Leave to Amend Although Claims Raised in Answer.---Where the essence of plaintiffs' complaint and amended complaint was that defendants made unauthorized and unwarranted diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purchase and renovation of the Square D facility, and where neither complaint included an allegation that monies from other sources of revenue were improperly diverted, although defense, asserted in the answer of the Board of Education defendants, raised a claim of misappropriation of revenues other than bond proceeds, the trial court did not err in limiting denial of defendants' motions to dismiss to only the allegations relating to the propriety of the expenditure of school bond proceeds on the Square D facility; if plaintiffs desired to add a claim that defendants diverted sources of revenue other than school bond proceeds, plaintiffs should have sought leave to amend under 1A-1, Rule 15(a). Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

§ 115C-546.2. Allocations from the Fund; uses; expenditures; reversion to General Fund; matching requirements.

(a) Monies in the Fund shall be allocated to the counties on a per average daily membership basis according to the average daily membership for the budget year as determined and certified by the State Board of Education. Interest earned on funds allocated to each county shall be allocated to that county.

(b) Monies in the Fund shall be used for capital outlay projects including the planning,

construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings and for the purchase of land for public school buildings. As used in this section, "public school buildings" only includes facilities for individual schools that are used for instructional and related purposes and does not include centralized administration, maintenance, or other facilities.

In the event a county finds that it does not need all or part of the funds allocated to it for capital outlay projects including the planning, construction, reconstruction, enlargement, improvement, repair, or renovation of public school buildings or for the purchase of land for public school buildings, the unneeded funds allocated to that county may be used to retire any indebtedness incurred by the county for public school facilities.

In the event a county finds that its public school building needs can be met in a more timely fashion through the allocation of financial resources previously allocated for purposes other than school building needs and not restricted for use in meeting public school building needs, the county commissioners may, with the concurrence of the affected local Board of Education, use those financial resources to meet school building needs and may allocate the funds it receives under this Article for purposes other than school building needs to the extent that financial resources were redirected from such purposes. The concurrence described herein shall be secured in advance of the allocation of the previously unrestricted financial resources and shall be on a form prescribed by the Local Government Commission.

(c) Monies in the Fund shall be matched on the basis of one dollar of local funds for every three dollars of State funds. Revenue received from local sales and use taxes that is restricted for public school capital outlay purposes pursuant to G.S. 105-502 or G.S. 105-487 may be used to meet the local matching requirement. Funds expended by a county after July 1, 1986, for land acquisition, engineering fees, architectural fees, or other directly related costs for a public school building capital project that was not completed prior to July 1, 1987, may be used to meet the local match requirement. (1987, c. 622, s. 12; c. 813, ss. 18.1, 19.1, 21; 1991 (Reg. Sess., 1992), c. 1030, s. 30.)

Local Modification.---Edgecombe and Nash Counties and local school administrative units located in those counties: 1987, c. 813, s. 18.2.

Editor's Note.---Session Laws 1987, c. 813, which amended subsections (b) and (c), provided in s. 25: "This act does not affect the rights or liabilities of the State, a taxpayer, or other person arising under a statute amended or repealed by this act before its amendment or repeal; nor does it affect the right to any refund or credit of a tax that would otherwise have been available under the amended or repealed statute before its amendment or repeal."

CASE NOTES

Plaintiffs Should Have Sought Leave to Amend Although Claim Raised in Answer.---Where the essence of plaintiffs' complaint and amended complaint was that defendants made unauthorized and unwarranted diversions of school bond proceeds to purposes other than those authorized by the bond resolution, namely for purchase and renovation of the Square D facility, and where neither complaint included an allegation that monies from other sources of revenue were improperly diverted, although defense, asserted in the answer of the Board of Education defendants, raised a claim of misappropriation of revenues other than bond proceeds, the trial court did not err

in limiting denial of defendants' motions to dismiss to only the allegations relating to the propriety of the expenditure of school bond proceeds on the Square D facility; if plaintiffs desired to add a claim that defendants diverted sources of revenue other than school bond proceeds, plaintiffs should have sought leave to amend under 1A-1, Rule 15(a). Moore v. Wykle, 107 N.C. App. 120, 419 S.E.2d 164, cert. denied, 332 N.C. 666, 424 S.E.2d 405 (1992).

§ 121-12. North Carolina Historical Commission.

(a) Protection of Properties on National Register.---It shall be the duty of the Historical Commission, meeting at such times and according to such procedures as it shall by rule prescribe, to provide an advisory and coordinative mechanism in and by which State undertakings of every kind that are potentially harmful to the cause of historic preservation within the State may be discussed, and where possible, resolved, giving due consideration to the competing public interests that may be involved. To this end, the head of any State agency having direct or indirect jurisdiction over a proposed State or state-assisted undertaking, or the head of any State department, board, commission, or independent agency having authority to build, construct, operate, license, authorize, assist, or approve any State or state-assisted undertaking, shall, prior to the approval of any State funds for the undertaking, or prior to any approval, license, or authorization, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470.

Where, in the judgment of the Commission, an undertaking will have an effect upon any listed district, site, building, structure, area, or object, the head of the appropriate State agency shall afford the Commission a reasonable opportunity to comment with regard to such undertaking.

The Historical Commission shall act with reasonable diligence to insure that all State departments, boards, commissions, or agencies potentially affected by the provisions of this section be kept currently informed with respect to the name, location, and other significant particulars of any district, site, building, structure, or object listed or placed upon the National Register of Historic Places. Each affected State department or agency shall furnish, either upon its own initiative or at the request of the Historical Commission such information as may reasonably be required by the Commission for the proper implementation of this section.

(b) Criteria for State Historic Properties.---The Commission shall prepare and adopt criteria for the evaluation of State historic sites and all other real and personal property which it may consider to be of such historic, architectural, archaeological, or cultural importance as would justify the acquisition and ownership thereof by the State of North Carolina, or for the extension of any assistance or aid thereto by the State, acting by itself or in connection with any county, city, corporation, organization, or individual. The Commission shall cooperate to the fullest practical extent with any local historical organization and with any city or county historic district properties commission. In evaluating whether a building should be a State historic site, the Commission shall request and review plans for the use and maintenance of the building.

(c) Criteria for State Aid to Historic Properties.---The Commission shall also prepare and adopt criteria for the evaluation of all properties of historic or archaeological importance owned by, under option to, or being considered for acquisition by a county, city, historic properties commission, or

other organization or individual for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all historic or archaeological property for which State aid or appropriations to be administered by the Department of Cultural Resources are proposed. If the property is a building, the Commission shall request and review the plans for the use, maintenance, operation, and purpose of the building and shall comment on the feasibility of the plans in the written report. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) Whether the property is historically authentic;

(2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a balanced State program of historic and archaeological sites and properties;

(3) The estimated total cost of the project under consideration and the appointment of said cost among State and nonstate sources;

(4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;

(5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance; and

(6) Such further comments and recommendations that the Commission may make.

(c1) Criteria for State Aid to Historical Museums.---The Commission shall also prepare and adopt criteria for the evaluation of all interpretive, security or climate control programs or projects to be installed in nonprofit history museums for which State aid or assistance is requested from the Department of Cultural Resources. The Commission shall investigate, evaluate, and prepare a written report on all interpretive, security, or climate control programs or projects for which State appropriations to be administered by the Department of Cultural Resources are proposed. This report, which shall be filed as a matter of record in the custody of the Department of Cultural Resources, shall set forth the following opinions or recommendations of the Commission:

(1) The statewide educational significance and the qualitative level of the program or project and whether the program or project is essential to the development of a State program of historical interpretation;

(2) The local or regional need for such a program or project;

(3) The estimated total cost of the program or project under consideration and the apportionment of said cost among State and nonstate sources;

(4) Whether practical plans have been or can be developed for the funding of the nonstate portions of the costs;

(5) Whether practical plans have been developed for the continued staffing, maintenance, and operating of the museum without State assistance; and

(6) Such further comments and recommendations that the Commission may make.

(d) Commission to Furnish Recommendations to Legislative Committees.---The Commission through the Department of Cultural Resources shall furnish as soon as practicable to the chairman of each legislative committee to which is referred any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of acquiring, preserving, restoring, or operating, or otherwise assisting, any property having historic, archaeological, architectural, or other cultural value or significance, and to the chairman of each legislative committee to which is referred

any bill seeking an appropriation of State funds to the Department of Cultural Resources for the purpose of assisting a history museum, at least five copies of a report on the findings and recommendations of the Commission relating to such property. (1973, c. 476, s. 48; 1975, c. 19, s. 40; 1979, c. 861, ss.3-5; 1985 (Reg. Sess., 1986), c. 1014, s. 171(b); 1995, c. 324, s. 12.)

Editor's Note.---Session Laws 1995, c. 324, s. 1.1, provides: "This act shall be known as the Continuation Budget Operations Appropriations Act of 1995."

Session Laws 1995, c. 324, s. 28.3, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1995-97 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1995-97 biennium."

Session Laws 1995, c. 324, s. 28.4 is a severability clause.

Effect of Amendments.—The 1995 amendment effective July 1, 1995, added the last sentence in subsection (b), and added the third sentence in subsection (c).

Legal Periodicals.---For symposium on historic preservation which includes a discussion of relevant North Carolina law, see 12 Wake Forest L. Rev. 9 (1976).

For article, "A Decade of Preservation and Preservation Law," see 11 N.C. Cent. L.J. 214 (1980).

Chapter 133.
Public Works.

ARTICLE 1.
General Provisions.

Sec.

133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.

133-1.1 Certain buildings involving public funds to be designed, etc., by architect or engineer.

133-2. Drawing of plans by material furnisher prohibited.

133-3. Specifications to carry competitive items; substitution of materials.

133-4. Violation of Chapter made misdemeanor.

Article 1.
General Provisions.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.

It shall be unlawful for any architect, engineer, or other individual, firm, or corporation providing design services for any city, county, or State work supported wholly or in part with public funds,

knowingly to specify any building materials, equipment or other items which are manufactured, sold or distributed by any firm or corporation in which such designer or specifier has a financial interest by reason of being a partner, officer, employee, agent or substantial stockholder. (1933, c. 66, s. 1; 1977, c. 730.)

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

(a) In the interest of public health, safety and economy, every officer, board, department, or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of one hundred thousand dollars ($100,000) for the repair of public buildings where such repair does not include major structural change, or in excess of forty-five thousand dollars ($45,000) for the construction of, or additions to, public buildings or State-owned and operated utilities shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of Chapter 83 of the General Statutes, or by a registered engineer, in accordance with the provisions of Chapter 89C of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all such plans and specifications.

(b) On all projects requiring the services of an architect or engineer, or both, the architect or engineer, or both, whose names and seals appear on the plans and specifications shall conduct frequent and regular inspections or such inspections as required by the contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:

(1) The inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and

(2) To the best of his knowledge and in the professional opinion of the architect or engineer the contractor has fulfilled the obligations of such plans, specifications, and contract.

No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled the obligations of such plans, specifications, and contract.

(c) The following shall be excepted from the requirements of subsection (a) of this section:

(1) Dwellings and outbuildings in connection therewith, such as barns and private garages.

(2) Apartment buildings used exclusively as the residence of not more than two families.

(3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.

(4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.

(d) On repair projects involving the expenditures of public funds in an amount of one hundred

thousand dollars ($100,000), or less, or on construction or addition projects involving the expenditures of public funds in an amount of forty-five thousand dollars ($45,000), or less, and on which no registered architect or engineer is employed, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply on projects wherein plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction.

(e) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(f) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority.

(g) On all facilities which are covered by this Article, other than those listed in subsection (c) of this section and which require any job-installed finishes, the plans and specifications shall include the color schedule. (1953, c. 1339; 1957, c. 994; 1963, c. 752; 1973, c. 1414, s. 2; 1979, c. 891; 1981, c. 687; 1983 (Reg. Sess., 1984), c. 970, s. 1.)

§ 133-2. Drawing of plans by material furnisher prohibited.

It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, State, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 133-3. Specifications to carry competitive items; substitution of materials.

All architects, engineers, designers, or draftsmen, when providing design services; or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works.

If an architect, engineer, designer, draftsman or owner prefers a particular brand of material, then such brand shall be bid as an alternate to the base bid and in such case the base bid shall cite three or more examples or items of equal or equivalent design, which would establish an acceptable range for items or equal or equivalent design. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts." (1933, c. 66, s. 3; 1951, c. 1104, s. 5.)

§ 133-4. Violation of Chapter made misdemeanor.

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall be subject to a fine of not more than five hundred dollars ($500.00). (1933, c. 66, s. 4.)

§ 136-18. Powers of Department of Transportation.

The said Department of Transportation shall be vested with the following powers:

(17) The Department of Transportation is hereby authorized and required to maintain and keep in repair, sufficient to accommodate the public school buses, roads leading from the state-maintained public roads to all public schools and public school buildings to which the children are transported on public school buses to and from their homes. Said Department of Transportation is further authorized to construct, pave, and maintain school bus driveways and sufficient parking facilities for the school buses at those schools. The Department of transportation is further authorized to construct, pave, and maintain all other driveways and entrances to the public schools leading from public roads not required in proceeding portion of this subdivision.

ARTICLE 3B.
Energy Conservation in Public Facilities.

Part 2. Guaranteed Energy Savings Contracts for Local Governmental Units.

§ 143-64.17. Definitions.

As used in this Part:

(1) "Energy conservation measure" means a facility alteration or training related to the operation of the facility that reduces energy consumption or operating costs and includes:

a. Insulation of the building structure and systems within the building;
b. Storm windows or doors, caulking, weatherstripping, multiglazed windows or doors, heat-absorbing or heat-reflective glazed or coated window or door systems, additional glazing, reductions in glass area, or other window or door system modifications that reduce energy consumption;
c. Automatic energy control systems;
d. Heating, ventilating, or air-conditioning system modifications or replacements;
e. Replacement or modification of lighting fixtures to increase the energy efficiency of a lighting system without increasing the overall illumination of a facility, unless an increase in illumination is necessary to conform to the applicable State or local building code or is required by the light system after the proposed modifications are made;
f. Energy recovery systems;
g. Cogeneration systems that produce steam or forms of energy such as heat, as well as electricity, for use primarily within a building or complex of buildings; or
h. Other energy conservation measures that provide long-term operating cost reductions or significantly reduce energy consumed.

(2) "Energy savings" means a measured reduction in fuel, energy, or operating costs created from the implementation of one or more energy conservation measures when compared with an established baseline of previous fuel, energy, or operating costs developed by the local governmental unit.

(3) "Guaranteed energy savings contract" means a contract for the evaluation, recommendation, or implementation of energy conservation measures, including the design and installation of equipment or the repair or replacement of existing equipment, in which all payments, except obligations on termination of the contract before its expiration, are to be made over time, and in which energy savings are guaranteed to exceed costs.

(4) "Local governmental unit" means any board or governing body of a political subdivision of the State, including any board of a community college, any school board, or an agency, commission, or authority of a political subdivision of the State.

(5) "Qualified provider" means a person or business experienced in the design, implementation, and installation of energy conservation measures.

(6) "Request for proposals" means a negotiated procurement initiated by a local governmental unit by way of a published notice that includes the following:
a. The name and address of the local governmental unit.
b. The name, address, title, and telephone number of a contact person in the local governmental unit.
c. Notice indicating that the local governmental unit is requesting qualified providers to propose energy conservation measures through a guaranteed energy savings contract.
d. The date, time, and place where proposals must be received.
e. The evaluation criteria for assessing the proposals.
f. A statement reserving the right of the local governmental unit to reject any or all the proposals.

g. Any other stipulations and clarifications the local governmental unit may require.

(1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 1.)

Editor's Note.—Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this Part effective upon ratification. The Act was ratified July 16, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this Part, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Effect of Amendments.—The 1995 amendment, effective June 20, 1995, and applicable to contracts entered into on or after that date, deleted the second sentence of subdivision (3), regarding when the local governmental unit could not be required to purchase a maintenance contract from the qualified provider installing the energy conservation measures.

§ 143-64.17A. Solicitation of guaranteed energy savings contracts.

(a) Before entering into a guaranteed energy savings contract, a local governmental unit shall issue a request for proposals. Notice of the request shall be published at least 15 days in advance of the time specified for opening of the proposals in at least one newspaper of general circulation in the geographic area for which the local governmental unit is responsible. No guaranteed energy savings contract shall be awarded by any governing body unless at least two proposals have been received from qualified providers. Provided that if after the publication of the notice of the request for proposals, fewer than two proposals have been received from qualified providers, the governing body of the local governmental unit shall again publish notice of the request and if as a result of the second notice, one or more proposals by qualified providers are received, the governing body may then open the proposals and select a qualified provider even if only one proposal is received.

(b) The local governmental unit shall evaluate a sealed proposal from any qualified provider. Proposals shall contain estimates of all costs of installation, modification, or remodeling, including costs of design, engineering, installation, maintenance, repairs, and debt service, and estimates of energy savings.

(c) Proposals received pursuant to this section shall be opened by a member or an employee of the governing body of the local governmental unit at a public opening at which the contents of the proposals shall be announced and recorded in the minutes of the governing body. Proposals shall be evaluated for the local governmental unit by a licensed architect or engineer on the basis of:

(1) The information required in subsection (b) of this section, and

(2) The criteria stated in the request for proposals.

The local governmental unit may require a qualified provider to include in calculating the cost of a proposal for a guaranteed energy savings contract any reasonable fee payable by the local governmental unit for evaluation of the proposal by a licensed architect or professional engineer not employed as a member of the staff of the local governmental unit or the qualified provider.

(d) The local governmental unit shall select the qualified provider that it determines to best meet the needs of the local governmental unit by evaluating the following:

(1) Prices offered;

(2) Proposed costs of construction, financing, maintenance, and training;
(3) Quality of products proposed;
(4) Amount of energy savings;
(5) General reputation and performance capabilities of the qualified providers;
(6) Substantial conformity with the specifications and other conditions set forth in the request for proposals;
(7) Time specified in the proposals for the performance of the contract; and
(8) Any other factors the local governmental unit deems necessary, which factors shall be made a matter of record.

(e) Nothing in this section shall limit the authority of local governmental units as set forth in Article 3D of this Chapter. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17B. Guaranteed energy savings contracts.

(a) A local governmental unit may enter into a guaranteed energy savings contract with a qualified provider if all of the following apply:

(1) The term of the contract does not exceed eight years from the date of the installation and acceptance by the local governmental unit of the energy conservation measures provided for under the contract.
(2) The local governmental unit finds that the energy savings resulting from the performance of the contract will equal or exceed the total cost of the contract.
(3) The energy conservation measures to be installed under the contract are for an existing building.

(b) Before entering into a guaranteed energy savings contract, the local governmental unit shall provide published notice of the meeting at which it proposes to award the contract, the names of the parties to the proposed contract, and the contract's purpose. The notice must be published at least 15 days before the date of the meeting.

(c) A qualified provider entering into a guaranteed energy savings contract under this Part shall provide a bond to the local governmental unit in the amount equal to one hundred percent (100%) of the total cost of the guaranteed energy savings contract to assure the provider's faithful performance. Any bonds required by this subsection shall be subject to the provisions of Article 3 of Chapter 44A of the General Statutes. If the savings resulting from a guaranteed energy savings contract are not as great as projected under the contract and all required shortfall payments to the local governmental unit have not been made, the local governmental unit may terminate the contract without incurring any additional obligation to the qualified provider.

(d) As used in this section, "total cost" shall include, but not be limited to, costs of construction, costs of financing, and cost of maintenance and training during the term of the contract. "Total cost" does not include any obligations on termination of the contract before its expiration, provided that those obligations are disclosed when the contract is executed.

(e) A guaranteed energy savings contract may not require the local governmental unit to purchase a maintenance contract or other maintenance agreement from the qualified provider who installs energy conservation measures under the contract if the local unit of government takes appropriate action to budget for its own forces or another provider to maintain new systems installed and existing systems affected by the guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3; 1995, c. 295, s. 2.)

Editor's Note.---Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report the contract and the terms of the contract to the Local Government Commission, and that the Commission shall compile the information, including the energy savings expected and realized, and report it biennially to the Joint Legislative Commission on Governmental Operations.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this Part, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this Part, in s. 10, as amended by Session Laws 1995, c. 295, s. 3, provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1999."

Effect of Amendments.----The 1995 amendment, effective June 20, 1995, and applicable to contracts entered into on or after that date, added "and all required shortfall payments to the local governmental unit have not been made" in the last sentence of subsection (c); in the last sentence of subsection (d) substituted "does not include" for "also includes" and added "provided that those obligations are disclosed when the contract is executed", and added subsection (e).

§ 143-64.17C. Installment and lease-purchase contracts.

Units of local government may finance the acquisition, installation, or maintenance of energy conservation measures acquired pursuant to this Part by installment or lease-purchase contracts in accordance with G.S. 160A-20 and G.S. 160A-19. Notwithstanding the provisions of G.S. 160A-20(h), a community college or board of education may enter into an installment contract or a lease-purchase contract for the purpose of financing energy conservation measures acquired pursuant to this Part. A community college or board of education that finances energy conservation measures pursuant to this section, either by an installment contract or a lease-purchase contract, is subject to the conditions and restrictions set out in G.S. 160A-20(a) through (g). (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17D. Contract continuance.

A guaranteed energy savings contract may extend beyond the fiscal year in which it becomes effective. Such a contract shall stipulate that it does not constitute a debt, liability, or obligation of any local governmental unit or a pledge of the faith and credit of any unit of local government. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

§ 143-64.17E. Payments under contract.

A local governmental unit may use any funds, whether operating or capital, that are not otherwise restricted by law for the payment of a guaranteed energy savings contract. State appropriations to any local governmental unit shall not be reduced as a result of energy savings occurring as a result of a guaranteed energy savings contract. (1993 (Reg. Sess., 1994), c. 775, s. 3.)

ARTICLE 3D.
Procurement of Architectural and Engineering Services.

§ 143-64.31. Declaration of public policy.

It is the public policy of this State and all public subdivisions and Local Governmental Units thereof, except in cases of special emergency involving the health and safety of the people or their property, to announce all requirements for architectural and engineering services, to select firms qualified to provide such services on the basis of demonstrated competence and qualification for the type of professional services required without regard to fee other than unit price information at this stage, and thereafter to negotiate a contract for architectural or engineering services at a fair and reasonable fee with the best qualified firm. If a contract cannot be negotiated with the best qualified firm, negotiations with that firm shall be terminated and initiated with the next best qualified firm. (1987, c. 102, s. 1.)

Cross References.—As to public contracts, see § 143-128 et seq.

Editor's Note.—Session Laws 1987, c. 102, s. 4 makes this section effective upon ratification. The act was ratified April 27, 1987.

§ 143-64.32. Written exemption of particular contracts.

Units of local government or the North Carolina Department of Transportation may in writing exempt particular projects from the provisions of this Article in the case of:

(a) Proposed projects where an estimated professional fee is in an amount less than thirty thousand dollars ($30,000), or

(b) Other particular projects exempted in the sole discretion of the Department of Transportation or the unit of local government, stating the reasons therefor and the circumstances attendant thereto. (1987, c. 102, s. 2.)

Editor's Note.—Session Laws 1987, c. 102, s. 4 makes this section effective upon ratification. The act was ratified April 27, 1987.

§ 143-64.33. Advice in selecting consultants or negotiating consultant contracts.

On architectural or engineering contracts, the Department of Transportation or the Department of Administration may provide, upon request by a county, city, town or other subdivision of the State, advice in the process of selecting consultants or in negotiating consultant contracts with architects and engineers or both.
(1987, c. 102, s. 3.)

Editor's Note.—Session Laws 1987, c. 102, s. 4 makes this section effective upon ratification. The act was ratified April 27, 1987.

Chapter 143.
State Departments, Institutions, and Commissions.

ARTICLE 8.
Public Building Contracts.

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ARTICLE 8.
Public Building Contracts.

§ 143-128. Requirements for certain building contracts.

(a) Preparation of specifications.---Every officer, board, department, commission or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration or repair of any buildings for the State, or for any county, municipality, or other public body, must have prepared separate specifications for each of the following subdivisions or branches of work to be performed:

(1) Heating, ventilating, air conditioning and accessories (separately or combined into one conductive system) and/or refrigeration for cold storage (where the cold storage cooling load is 15 tons or more of refrigeration), and all work kindred thereto.

(2) Plumbing and gas fittings and accessories, and all work kindred thereto.

(3) Electrical wiring and installations, and all work kindred thereto.

(4) General work relating to the erection, construction, alteration, or repair of any building above referred to, which work is not included in the above-listed three subdivisions or branches.

All such specifications must be so drawn as to permit separate and independent bidding upon each of the subdivisions or branches of work enumerated above. The above enumeration of subdivisions or branches of work shall not be construed to prevent any officer, board, department, commission or commissions from preparing additional separate specifications for any other category of work.

(b) Building projects over five hundred thousand dollars ($500,000); separate prime contracts.--Except as provided in subsection (d) of this section, when the entire cost of the erection, construction, alteration, or repair of a building exceeds five hundred thousand dollars ($500,000), the State, county, municipality, or other public body shall accept bids for each subdivision or branch of work for which specifications are required to be prepared under subsection (a) of this section and shall award the respective work specified separately to responsible and reliable persons, firms or corporations regularly engaged in their respective lines of work. When the estimated cost of work to be preformed in any single subdivision or branch for which separate bids are required by this subsection is less than twenty-five thousand dollars ($25,000), the same may be included in the contract for one of the other subdivisions or branches of the work, irrespective of total project cost.

Bids may also be accepted from and awards made to separate contractors for other categories of work.

Each separate contractor shall be directly liable to the State of North Carolina, or to the county or municipality, and to the other separate contractors for the full performance of all duties and obligations due respectively under the terms of the separate contracts and in accordance with the plans and specifications, which shall specifically set forth the duties and obligations of each separate contractor. For the purpose of this section, 'separate contractor' means any person, firm or corporation who shall enter into a contract with the State, or with any county, municipality, or other public body, for the erection, construction, alteration or repair of any building or buildings, or parts thereof.

(c) Building projects five hundred thousand dollars ($500,000) or less.---When the entire cost of the erection, construction, alteration, or repair of a building is five hundred thousand dollars ($500,000) or less, the State, county, municipality, or other public body may accept bids under the single-prime contract system, the separate prime contract system, or both. The provisions of subsection (b) of this section apply to the use of the separate prime contract system under this subsection. The provisions of subsection (d) of this section apply to the use of the single-prime contract system under this section, except that bidding in the alternative between the single-prime and separate prime systems is not required. Contracts bid in the alternative between the single-prime and separate prime systems under this subsection must be awarded to the lowest responsible bidder or bidders, as provided in subsection (d) of this section.

(d) Single-prime and alternative contracts.---The State, a county, municipality, or other public body may accept bids under the single-prime contract system or a contracting method approved by the State Building Commission under G.S. 143-135.26.

If the State, county, municipality, or other public body accepts bids under the single-prime contract, it must also seek bids for the project under the separate prime contract system, except as otherwise authorized under G.S. 143-135.26, and award the contract to the lowest responsible bidder or bidders for the total project, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

When the bids are accepted under the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General.

No contractor whose bid is accepted shall substitute any person as subcontractor in the place of the subcontractor listed in the original bid, except with the approval of the awarding authority for good cause shown by the contractor. The terms, conditions, and requirements of each contract between the contractor and a subcontractor performing work under a subdivision or branch of work listed in this subsection shall be substantially the same as the terms, conditions, and requirements of the contract between the contractor and the State, county, municipality, or other public body.

The requirements of this subsection governing the identification of bidders, substitution of contractors, and the terms and conditions of subcontractor's contracts apply to all single-prime bidding and single-prime contracts, regardless of whether bidding in the alternative between the single-prime and separate prime systems has been waived by the State Building Commission.

(e) Project expediter; scheduling.---The State, county, municipality, or other public body may, if specified in the bid documents, provide for assignment of responsibility for expediting the work on the project to a single responsible and reliable person, firm, or corporation which may be a prime contractor. In executing this responsibility, the designated project expediter may recommend to the State, county, municipality, or other public body whether payment to a contractor should be approved. The project expediter, if required by the contract documents, shall be responsible for the preparation of the project schedule and shall allow all contractors and subcontractors performing any of the branches of work listed in subsection (d) of this section equal input into the preparation of the initial schedule.

(f) Minority goals.---The State shall have a verifiable ten percent (10%) goal for participation

by minority businesses in the total value of work for each building project. Each city, county, or other public body shall adopt, after a notice and public hearing, an appropriate verifiable percentage goal for participation by minority businesses in the total value of work for each building project.

As used in this subsection:

(1) The term 'minority-business' means a business:

a. In which at least fifty-one percent (51%) is owned by one or more minority persons, or in the case of a corporation, in which at least fifty-one percent (51%) of the stock is owned by one or more minority persons; and

b. Of which the management and daily business operation are controlled by one or more of the minority persons who own it.

(2) The term 'minority person' means a person who is a citizen or lawful permanent resident of the United States and who is:

a. Black, that is, a person having origins in any of the black racial groups in Africa;

b. Hispanic, that is, a person of Spanish or Portuguese culture with origins in Mexico, South or Central America, or the Caribbean Islands, regardless of race;

c. Asian American, that is, a person having origins in any of the original peoples of the Far East, Southeast Asia and Asia, the Indian subcontinent, or the Pacific Island; or

d. American Indian or Alaskan Native, that is, a person having origins in any of the original peoples of North America; or

e. Female

(3) The term 'verifiable goal' means:

a. For purposes of the separate prime contract system, that the awarding authority has adopted written guidelines specifying the actions that will be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section.

b. For purposes of the single-prime contract system, that the awarding authority has adopted written guidelines specifying the actions that the prime contractor must take to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section; the required actions must be documented in writing by the contractor to the appropriate awarding authority.

c. For purposes of an alternative contracting system authorized by the State Building Commission under G.S. 143-135.26(9), that the awarding authority has adopted written guidelines specifying the action to be taken to ensure a good faith effort in the recruitment and selection of minority businesses for participation in contracts awarded under this section.

The State, counties, municipalities, and all other public bodies shall award public building contracts without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition, as defined in G.S. 168-A3. Nothing in this section shall be construed to require contractors or awarding authorities to award contracts or subcontracts to or to make purchases of materials or equipment from minority-business contractors or minority-business subcontractors who

do not submit the lowest responsible bid or bids.

(g) Exceptions.---This section shall not apply to:

(1) The purchase and erection of prefabricated or relocatable buildings or portions thereof, except that portion of the work which must be performed at the construction site.

(2) The erection, construction, alteration, or repair of a building when the cost thereof is one hundred thousand dollars ($100,000) or less.

§ 143-129. Procedure for letting of public contracts; purchases from federal government by State, counties, etc.

(a) No construction or repair work requiring the estimated expenditure of public money in an amount equal to or more than one hundred thousand dollars ($100,000) or purchase of apparatus, supplies, materials, or equipment requiring an estimated expenditure of public money in an amount equal to or more than twenty thousand dollars ($20,000), except in cases of group purchases made by hospitals through a competitive bidding purchasing program or in cases of special emergency involving the health and safety of the people or their property, shall be performed, nor shall any contract be awarded therefor, by any board or governing body of the State, or of any institution of the State government, or of any county, city, town, or other subdivision of the State, unless the provisions of this section are complied with. For purposes of this Article, a competitive bidding group purchasing program is a formally organized program that offers purchasing services at discount prices to two or more hospital facilities. The limitation contained in this paragraph shall not apply to construction or repair work undertaken during the progress of a construction or repair project initially begun pursuant to this section. Further, the provisions of this section shall not apply to the purchase of gasoline, diesel fuel, alcohol fuel, motor oil or fuel oil. Such purchases shall be subject to G.S. 143-131.

Advertisement of the letting of such contracts shall be as follows:

Where the contract is to be let by a board or governing body of the State government, or of a State institution, as distinguished from a board or governing body of a subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in the State of North Carolina. Provided that the advertisements for bidders required by this section shall be published at such a time that at least seven full days shall lapse between the date of publication of notice and the date of the opening of bids.

Where the contract is to be let by a county, city, town or other subdivision of the State, proposals shall be invited by advertisement at least one week before the time specified for the opening of said proposals in a newspaper having general circulation in such county, city, town or other subdivision.

Such advertisement shall state the time and place where plans and specifications of proposed work or a complete description of the apparatus, supplies, materials or equipment may be had, and the time and place for opening of the proposals, and shall reserve to said board or governing body the right to reject any or all such proposals.

Proposals shall not be rejected for the purpose of evading the provisions of this Article. No board or governing body of the State or subdivision thereof shall assume responsibility for construction or purchase contracts, or guarantee the payments of labor or materials therefor except under provisions of this Article.

All proposals shall be opened in public and shall be recorded on the minutes of the board or governing body and the award shall be made to the lowest responsible bidder or bidders, taking into consideration quality, performance and the time specified in the proposals for the performance of the contract. In the event the lowest responsible bids are in excess of the funds available for the project, the responsible board or governing body is authorized to enter into negotiations with the lowest responsible bidder above mentioned, making reasonable changes in the plans and specifications as may be necessary to bring the contract price within the funds available, and may award a contract to such bidder upon recommendation of the Department of Administration in the case of the State government or of a State institution or agency, or upon recommendation of the responsible commission, council or board in the case of a subdivision of the State, if such bidder will agree to perform the work at the negotiated price within the funds available therefor. If a contract cannot be let under the above conditions, the board or governing body is authorized to readvertise, as herein provided, after having made such changes in plans and specifications as may be necessary to bring the cost of the project within the funds available therefor. The procedure above specified may be repeated if necessary in order to secure an acceptable contract within the funds available therefor.

No proposal shall be considered or accepted by said board or governing body unless at the time of its filing the same shall be accompanied by a deposit with said board or governing body of cash, or a cashier's check, or a certified check on some bank or trust company insured by the Federal Deposit Insurance Corporation in an amount equal to not less than five percent (5%) of the proposal. In lieu of making the cash deposit as above provided, such bidder may file a bid bond executed by a corporate surety licensed under the laws of North Carolina to execute such bonds, conditioned that the surety will upon demand forthwith make payment to the oblige upon said bond if the bidder fails to execute the contract in accordance with the bid bond. This deposit shall be retained if the successful bidder fails to execute the contract within 10 days after the award or fails to give satisfactory surety as required herein. In the case of proposals in an estimated amount of less than one hundred thousand dollars ($100,000) for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a bid bond or other deposit.

Bids shall be sealed if the invitation to bid so specifies and, in any event, the opening of a bid or the disclosure or exhibition of the contents of any bid by anyone without the permission of the bidder prior to the time set for opening in the invitation to bid shall constitute a general misdemeanor.

All contracts to which this section applies shall be executed in writing, and the board or governing body shall require the person to whom the award of contract is made to furnish bond as required by Article 3 of Chapter 44A; or require a deposit of money, certified check or government securities for the full amount of said contract to secure the faithful performance of the terms of said contract and the payment of all sums due for labor and materials in a manner consistent with Article 3 of Chapter 44A; and no such contract shall be altered except by written agreement of the contractor, the sureties on his bond, and the board or governing body. Such surety bond or deposit required herein shall be deposited with the board or governing body for which the work is to be performed. When a deposit, other than a surety bond, is made with the board or governing body,

said board or governing body assumes all the liabilities, obligations and duties of a surety as provided in Article 3 of Chapter 44A to the extent of said deposit. In the case of contracts for the purchase of apparatus, supplies, materials, or equipment, the board or governing body may waive the requirement for a surety bond or other deposit.

The owning agency or the Department of Administration, in contracts involving a State agency, and the owning agency or the governing board, in contracts involving a political subdivision of the State, may reject the bonds of any surety company against which there is pending any unsettled claim or complaint made by a State agency or the owning agency or governing board of any political subdivision of the State arising out of any contract under which State funds, in contracts with the State, or funds of political subdivisions of the State, in contracts with such political subdivision, were expended, provided such claim or complaint has been pending more than 180 days.

Nothing in this section shall operate so as to require any public agency to enter into a contract which will prevent the use of unemployment relief labor paid for in whole or in part by appropriations or funds furnished by the State or federal government.

Any board or governing body of the State or any institution of the State government or of any county, city, town, or other subdivision of the State may enter into contract with (I) the United States of America or any agency thereof, or (ii) any other government unit or agency thereof within the United States, for the purchase, lease, or other acquisition of any apparatus, supplies, materials, or equipment without regard to the foregoing provisions of this section or to the provisions of any other section of this Article.

The Secretary of Administration or the governing board of any county, city, town, or other subdivision of the State may designate any office or employee of the State, county, city, town or subdivision to enter a bid or bids in its behalf at any sale of apparatus, supplies, materials, equipment or other property owned by (i) the United States of America or any agency thereof, or (ii) any other governmental unit or agency thereof within the United States, and may authorize such officer or employee to make any partial or down payment or payment in full that may be required by regulations of the government or agency disposing of such property. (1931, c. 338, s. 1; 1933, c. 50; c. 400, s. 1; 1937, c. 355; 1945, c. 144; 1949, c. 257; 1951, c. 1104, ss. 1, 2; 1953, c. 1268; 1955, c. 1049; 1957, c. 269, s. 3; c. 391; c. 862, ss. 1-4; 1959, c. 392, s. 1; c. 910, s. 1; 1961, c. 1226; 1965, c. 841, s. 2; 1967, c. 860; 1971, c. 847; 1973, c. 1194, s. 2; 1975, c. 879, s. 46; 1977, c. 619, ss. 1, 2; 1979, c. 182, s. 1; 1979, 2nd Sess., c. 1081; 1981, c. 346, s. 1; c. 754, s. 1.)

§ 143-129.1. Withdrawal of bid.

A public agency may allow a bidder submitting a bid pursuant to North Carolina G.S.143-129 for construction or repair work to withdraw his bid from consideration after the bid opening without forfeiture of his bid security if the price bid was based upon a mistake, which constituted a substantial error, provided the bid was submitted in good faith, and the bidder submits credible evidence that the mistake was clerical in nature as opposed to a judgment error, and was actually due to an unintentional and substantial arithmetic error or an unintentional omission of a substantial quantity of work, labor, material or services made directly in the compilation of the bid, such unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence

drawn from inspection of the original work papers, documents or materials used in the preparation of the bid sought to be withdrawn. A request to withdraw a bid must be made in writing to the public agency which invited the proposals for the work prior to the award of the contract, but not later than 72 hours after the opening of bids.

If a request to withdraw a bid has been made in accordance with the provisions of this section, action on the remaining bids shall be considered, in accordance with North Carolina G.S. 143-129, as though said bid had not been received. Not withstanding the foregoing, such bid shall be deemed to have been received for the purpose of complying with the requirements of G.S. 143-132. Provided, however, in the event the work is relet for bids, under no circumstances shall the bidder who has filed a request to withdraw be permitted to rebid the work.

If a bidder files a request to withdraw his bid, the agency shall promptly hold a hearing thereon. The agency shall give to the withdrawing bidder reasonable notice of the time and place of any such hearing. The bidder, either in person or through counsel, may appear at the hearing and present any additional facts and arguments in support of his request to withdraw his bid. The agency shall issue a written ruling allowing or denying the request to withdraw within five days after the hearing. If the agency finds that the price bid was based upon a mistake of the type described in the first paragraph of this section, then the agency shall issue a ruling permitting the bidder to withdraw without forfeiture of the bidder's security. If the agency finds that the price bid was based upon a mistake not of the type described in the first paragraph of this section, then the agency shall issue a ruling denying the request to withdraw and requiring the forfeiture of the bidder's security. A denial by the agency of the request to withdraw a bid shall have the same effect as if an award had been make to the bidder and a refusal by the bidder to accept had been made, or as if there had been a refusal to enter into the contract, and the bidder's bid deposit or bid bond shall be forfeited.

In the event said ruling denies the request to withdraw the bid, the bidder shall have the right, within 20 days after receipt of said ruling, to contest the matter by the filing of a civil action in any court of competent jurisdiction of the State of North Carolina. The procedure shall be the same as in all civil actions except all issues of law and fact and every other issue shall be tried de novo by the judge without jury; provided that the matter may be referred in the instances and in the manner provided for by North Carolina G.S. 1A-1, Rule 53, as amended. Notwithstanding the forgoing, if the public agency involved is the Department of Administration, it may follow its normal rules and regulations with respect to contested matters, as opposed to following the administrative procedures set forth herein. If it is finally determined that the bidder did not have the right to withdraw his bid pursuant to the provisions of this section, the bidder's security shall be forfeited. Every bid bond or bid deposit given by a bidder to a public agency pursuant to G.S. 143-129 shall be conclusively presumed to have been given in accordance with this section, whether or not it be so drawn as to conform to this section. This section shall be conclusively presumed to have been written into every bid bond given pursuant to G.S. 143-129.

Neither the agency nor any elected or appointed official, employee, representative or agent of such agency shall incur any liability or surcharge, in the absence of fraud or collusion, by permitting the withdrawal of a bid pursuant to the provisions of this section.

No withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract or work agreement for, any person to whom a contract or

subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted, without the prior written approval of the agency. Whoever violates the provisions of the foregoing sentence shall be guilty of a misdemeanor. (1977, c. 617, s. 1.)

§ 143-129.4. Guaranteed energy savings contracts.

The solicitation and evaluation of proposals for guaranteed energy savings contracts, as defined in Part 2 of Article 3B of this Chapter, and the letting of contracts for these proposals are governed solely by the provisions of that Part; except that guaranteed energy savings contracts are subject to the requirements of G.S. 143-128(f). (1993 (Reg. Sess., 1994), c. 775, s. 4; 1995, c. 509, s. 135.2(k).)

Editor's Note.----Session Laws 1993 (Reg. Sess., 1994), c. 775, s. 11, made this section effective upon ratification. The Act was ratified July 16, 1994.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this section, in s. 9 provides that a local governmental unit that enters into a guaranteed energy savings contract must report it to the Local Government Commission.

Session Laws 1993 (Reg. Sess., 1994), c. 775, which enacted this section, in s. 10 provides: "A local governmental unit may not enter into a guaranteed energy savings contract under Part 2 of Article 3B of Chapter 143 of the General Statutes, as enacted by this act, on or after July 1, 1997."

Effect of Amendments.—The 1995 amendment, effective October 1, 1995, substituted "G.S. 143-128(f)" for "G.S. 143-128(c)".

§ 143-130. Allowance for convict labor must be specified.

In cases where the board or governing body of a State agency or of any political subdivision of the State may furnish convict or other labor to the contractor, manufacturer, or others entering into contracts for the performance of construction work, installation of apparatus, supplies, materials or equipment, the specifications covering such projects shall carry full information as to what wages shall be paid for such labor or the amount of allowance for same. (1933, c. 400, s. 2; 1967, c. 860.)

§ 143-131. When counties, cities, towns and other subdivisions may let contracts on informal bids.

All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of five thousand dollars ($5,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. All such contracts shall be awarded to the lowest

responsible bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract. It shall be the duty of any officer, department, board, or commission entering into such contract to keep a record of all bids submitted, and such record shall be subject to public inspection at any time. (1931, c. 338, s. 2; 1957, c. 862, s. 5; 1959, c. 406; 1963, c. 172; 1967, c. 860; 1971, c. 593; 1981, c. 719, s. 1.)

§ 143-132. Minimum number of bids for public contracts.

(a) No contract to which G.S. 143-129 applies for construction or repairs shall be awarded by any board or governing body of the State, or any subdivision thereof, unless at least three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor; however, this section shall not apply to contracts which are negotiated as provided for in G.S. 143-129. Provided that if after advertisement for bids as required by G.S. 143-129, not as many as three competitive bids have been received from reputable and qualified contractors regularly engaged in their respective lines of endeavor, said board or governing body of the State agency or of a county, city, town or other subdivision of the State shall again advertise for bids; and if as a result of such second advertisement, not as many as three competitive bids from reputable and qualified contractors are received, such board or governing body may then let the contract to the lowest responsible bidder submitting a bid for such project, even though only one bid is received.

(b) For purposes of contracts bid in the alternative between the separate-prime and single-prime contracts, pursuant to G.S. 143-128(c) or (d), each single-prime bid shall constitute a competitive bid in each of the four subdivisions or branches of work listed in G.S. 143-128 (a), and each full set of separate-prime bids shall constitute a competitive single-prime bid in meeting the requirements of subsection (a) of this section. If there are at least three single-prime bids but there is not at least one full set of separate-prime bids, no separate-prime bids shall be opened.

(c) The State Building Commission shall develop guidelines no later than January 1, 1991 governing the opening of bids pursuant to this Article. The guidelines shall be distributed to all public bodies subject to this Article. The guidelines shall not be subjected to the provisions of Chapter 150B of the General Statutes." (1931, c. 291, s. 3; 1951, c. 1104, s. 3; 1959, c. 392, s. 2; 1963, c. 289; 1967, c. 860; 1977, c. 644; 1979, c. 182, s. 2; 1989, c. 480, s.2.)

Editor's Note.-Session Laws 1989, c. 480, s. 3 provides: "The State Construction Office of the Department of Administration, the Division of School Planning of the Department of Public Education, the Division of Facility Services of the Department of Human Resources, the North Carolina Association of County Commissioners, the North Carolina League of Municipalities, the School Board Association, and the North Carolina Hospital Association shall monitor and study the separate prime and single-prime contract systems in the bidding of public building projects and shall compile data on the total verifiable contractual, legal, and administrative cost to the public.

The State Building Commission shall develop the necessary forms and procedures to survey the public contracts let. The public bodies responsible for the award of contracts shall submit all necessary records to the appropriate office division, association, or individual as directed by the State Building Commission. The appropriate office, division, association, or individual shall maintain records of public contracts from bodies under their supervision or bodies that are their members.

An executive summary of data shall be submitted to the State Building Commission and such data shall be compiled and analyzed in a report to be made to the 1995 Session of the General Assembly."

Session Laws 1989, c.480, as amended by Session Laws 1989, c. 770, s. 74.17, provides in s. 3.1: "Contracts awarded pursuant to the separate prime contract system during the period beginning on June 8, 1989 and ending December 31, 1989 are not hereby invalidated for noncompliance with G.S. 143-128(c)."

Effective of Amendments - The 1989 amendment, effective June 28, 1989, designated the first paragraph as subsection (a) and subsection (b). As to the expiration of this amendment, see the Editor's Note.

§ 143-134.1. Interest on final payments due to prime contractors.

(a) On all public construction contracts which are let by a board or governing body of the State government or any political subdivision thereof, except contracts let by the Department of Transportation pursuant to G.S. 136-28.1, the balance due prime contractors shall be paid in full within 45 days after respective prime contracts of the project have been accepted by the owner, certified by the architect, engineer or designer to be completed in accordance with terms of the plans and specifications, or occupied by the owner and used for the purpose for which the project was constructed, whichever comes first. Provided, however, that whenever the architect or consulting engineer in charge of the project determines that delay in completion of the project in accordance with terms of the plans and specifications is the fault of the contractor, the project may be occupied and used for the purposes for which it was constructed without payment of any interest on amounts withheld past the 45 day limit. No payment shall be delayed because of the failure of another prime contractor on such project to complete his contract. Should final payment to any prime contractor beyond the date such contracts have been certified to be completed by the designer or architect, accepted by the owner, or occupied by the owner and used for the purposes for which the project was constructed, be delayed by more than 45 days, said prime contractor shall be paid interest, beginning on the 46th day, at the rate of one percent (1%) per month or fraction thereof unless a lower rate is agreed upon on such unpaid balance as may be due. In addition to the above final payment provisions, periodic payments due a prime contractor during construction shall be paid in accordance with the payment provisions of the contract documents or said prime contractor shall be paid interest on any such unpaid amount at the rate stipulated above for delayed final payments. Such interest shall begin on the date the payment is due and continue until the date on which payment is made. Such due date may be established by the terms of the contract. Funds for payment of such interest on state-owned projects shall be obtained from the current budget of the owning department, institution, or agency. Where a conditional acceptance of a contract exists, and where

the owner is retaining a reasonable sum pending correction of such conditions, interest on such reasonable sum shall not apply. (1959, c. 1328; 1967, c. 860; 1979, c. 778.)

(b) Within seven days of receipt by the prime contractor of each periodic or final payment, the prime contractor shall pay the subcontractor based on work completed or service provided under the subcontract. Should any periodic or final payment to the subcontractor be delayed by more than seven days after receipt of periodic or final payment by the prime contractor, the prime contractor shall pay the subcontractor interest, beginning on the eighth day, at the rate of one percent (1%) per month or fraction thereof on such unpaid balance as may be due.

(c) The percentage of retainer on payments made by the prime contractor to the subcontractor shall not exceed the percentage of retainer on payments made by the owner to the prime contractor. Any percentage of retainer on payments made by the prime contractor to the subcontractor that exceeds the percentage of retainer on payments made by the owner to the prime contractor shall be subject to interest to be paid by the prime contractor to the subcontractor at the rate of one percent (1%) per month or fraction thereof.

(d) Nothing in this section shall prevent the prime contractor at the time of application and certification to the owner from withholding application and certification to the owner for payment to the subcontractor for unsatisfactory job progress; defective construction not remedied; disputed work; third party claims filed or reasonable evidence that claim will be filed; failure of subcontractor to make timely payments for labor, equipment, and materials; damage to prime contractor or another subcontractor; reasonable evidence that subcontract cannot be completed for the unpaid balance of the subcontract sum; or a reasonable amount for retainer not to exceed the initial percentage retained by the owner.

§ 143-135. Limitation of application of Article.

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed seventy-five thousand dollars ($75,000). Such force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article. (1933, c. 552, ss. 1, 2; 1949, c. 1137, s. 2; 1951, c. 1104, s. 6; 1967, c. 860; 1975, c. 292, ss. 1, 2; c. 879, s. 46; 1979, 2nd Sess., c. 1248; 1981, c. 860, s. 13.)

§ 143-135.8 Prequalification.

Bidders may be prequalified for any public construction project. (1995, c. 367, s. 8.)

Editor's Note.—Session Laws 1995, c. 367, s. 11, made this section effective October 1, 1995.

§ 143-135.26. Powers and duties of the Commission.

The State Building Commission shall have the following powers and duties with regard to the State's capital facilities development and management program:

(1) To adopt rules establishing standard procedures and criteria to assure that the designer selected for each State capital improvement project and the consultant selected for planning and studies of an architectural and engineering nature associated with a capital improvement project or a future capital improvement project has the qualifications and experience necessary for that capital improvement project or the proposed planning or study project. The rules shall provide that the State Building Commission, after consulting with the funded agency, is responsible and accountable for the final selection of the designer and the final selection of the consultant except when the General Assembly or The University of North Carolina is the funded agency. When the General Assembly is the funded agency, the Legislative Services Commission is responsible and accountable for the final selection of the designer and the final selection of the consultant, and when the University is the funded agency, it shall be subject to the rules adopted hereunder, except it is responsible and accountable for the final selection of the designer and the final selection of the consultant. All designers and consultants shall be selected within 60 days of the date funds are appropriated for a project by the General Assembly or the date of project authorization by the Director of the Budget; provided, however, the State Building Commission may grant an exception to this requirement upon written request of the funded agency if (i) no site was selected for the project before the funds were appropriated or (ii) funds were appropriated for advance planning only; provided, further, the Director of the Budget, after consultation with the State Construction Office, may waive the 60-day requirement for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects. The Director of the Budget also may, after consultation with the State Construction Office, schedule the availability of design and construction funds for capital improvement projects for the purpose of minimizing project costs through increased competition and improvements in the market availability of qualified contractors to bid on State capital improvement projects.

The State Building Commission shall submit a written report to the Joint Legislative Commission on Governmental Operations on the Commission's selection of a designer for a project within 30 days of selecting the designer.

(2) To adopt rules for coordinating the plan review, approval, and permit process for State capital improvement projects.

(3) To adopt rules for establishing a post-occupancy evaluation, annual inspection and preventive maintenance program for all State buildings.

(4) To develop procedures for evaluating the work performed by designers and contractors on State capital improvement projects and those community college buildings, as defined in G.S. 143-336, requiring the estimated expenditure for construction or repair work for which public bidding is required under G.S. 143-129, and for use of the evaluations as a factor affecting designer selections and determining qualification of contractors to bid on State capital improvement projects and community college buildings.

(5) To continuously study and recommend ways to improve the effectiveness and efficiency of the State's capital facilities development and management program.

(6) To request designers selected prior to April 14, 1987, whose plans for the projects have not been approved to report to the Commission on their progress on the projects. The Department of Administration shall provide the Commission with a list of all such projects.

(7) To appoint an advisory board, if the Commission deems it necessary, to assist the Commission in its work. No one other than the Commission may appoint an advisory board to assist or advise it in its work; and

(8) To review the State's provisions for ensuring the safety and health of employees involved with State capital improvement projects, and to recommend to the appropriate agencies and to the General Assembly, after consultation with the Commissioner of Labor, changes in the terms and conditions of construction contracts, State regulations, or State laws that will enhance employee safety and health on these projects.

(9) Effective July 1, 1996, to authorize a State agency, a local governmental unit, or any other entity subject to the provisions of G.S. 143-129 to use a method of contracting not authorized under G.S. 143-128, including the use of the single-prime contracting system without soliciting bids under both the single and separate prime contract systems. An authorization under this subdivision for an alternative contracting method shall be granted only under the following conditions:

a. An authorization shall apply only to a single project.

b. The entity seeking authorization must demonstrate to the Commission that the alternative contracting method is necessary because the project cannot be reasonably completed under the methods authorized under G.S. 143-128 or for such other reasons as the Commission, pursuant to its rules and criteria, deems appropriate and in the public's interest.

c. The authorization must be approved by two-thirds of the members of the Commission present and voting.

The Commission shall not waive the requirements of G.S. 143-129 or G.S. 143-132 for public contracts unless otherwise authorized by law.

The Commission shall submit an annual report of its activities to the Governor and the Joint Legislative Commission on Governmental Operations. (1987, c. 71, s.1; c. 721, s. 2; c. 830, s. 79(a); 1989, c. 50; 1989 (Reg. Sess., 1990), c. 889; 1991 (Reg. Sess., 1992), c. 893, s. 1; 1993, c. 561, s. 29; 1995, c. 367, s. 10; 1996, 2nd Ex. Sess., c. 18, s. 10.1.)

Editor's Note.---Session Laws 1987 (Reg. Sess., 1988), c. 1086, s. 123(b) provides: "(b) The Office of State Budget and Management may contract for and supervise all aspects of design,

construction, or demolition of prison facilities designated in subdivisions (1) through (5) of subsection (a) of this section [s. 123 of c. 1086, which provided for prison facilities construction funds] without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-64.10 through 143.64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and 133-1.1 (g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date.

"Construction of the dormitories set out in subdivisions (1), (2), (3), and (4) of subsection (a) of this section shall be based on the existing design used for the new 104-man dormitories built in the South Piedmont Area of the Division of Prisons to comply with the consent judgment in the case of HUBERT v. WARD, allowing for site adaptations and other necessary modifications.

"This subsection expires upon completion of the capital projects designated in subdivisions (1) through (5) of subsection (a) of this section."

Session Laws 1989, c. 754, s. 28(a) provides: "(a) Of the funds appropriated in Section 4 of this act to the Office of State Budget and Management for the purpose of construction of prison facilities, the Office of State Budget and Management may contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of prison facilities without being subject to the requirements of the following statutes and rules implementing those statutes: G.S. 143-135.26(1), 143-128, 143-129, 143-132, 143-134, 143-131, 143-135.26, 143-64.10 through 143-64.13, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(b), and 133-1.1(g). All contracts for the design, construction, or demolition of these facilities shall include a penalty for failure to complete the work by a specified date."

As to exemption of the Office of State Budget and Management from the requirements of this section in the administration and implementation of the Prison Facilities Legislative Bond Act of 1990, see Session Laws 1989 (Reg. Sess., 1990), c. 933, s. 6(4).

As to the exemption of the Office of State Budget and Management from the requirements of this section in providing prison facilities under the provisions of the State Prison and Youth Services Facilities Bond Act, see Session Laws 1989 (Reg. Sess., 1990), c. 935, s. 6(a)(4).

As to exemption of the Office of Management and Budget from the requirements of this section with respect to facilities authorized for the Department of Correction, see Session Laws 1991, c. 689, s. 239(f), as amended by 1991 Session Laws (Reg. Sess., 1992), c. 1044, s. 41(b), quoted under § 143-64.10.

Session Laws 1993, c. 550, s. 6, effective July 1, 1993, provides that if the Secretary of Administration, after consultation with the Secretary of Correction, finds that the delivery of state prison and youth services facilities authorized to be constructed under that act must be expedited for good cause, the Office of State Construction of the Department of Administration may use alternative delivery systems and shall be exempt from several statutes, including this section, and rules implementing those statutes to the extent necessary to expedite delivery. Section 6 also sets out the provisions governing the exercise of the exemptions allowable and other relevant provisions.

Session Laws 1993, c. 561, s. 23.1, as added by Session Laws 1994, Extra Session, c. 24, s. 54, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

As to the exemption of the Office of State Construction of the Department of Administration from the requirements of this section to the extent necessary to expedite delivery of certain prison facilities, see Session Laws 1994, Extra Session, c. 24, s. 67.

Session Laws 1994, Extra Session, c. 24, s. 70, provides: "Except for statutory changes or other provisions that clearly indicate an intention to have effects beyond the 1993-95 biennium, the textual provisions of this act shall apply only to funds appropriated for and activities occurring during the 1993-95 biennium."

Session Laws 1995, c. 507, s. 27.10, provides that if the construction of prison facilities in Avery and Mitchell Counties must be expedited for good cause, as determined by the Secretary of Administration and Secretary of Correction, the Office of State Construction of the Department of Administration shall be exempt from the following statutes and rules to the extent necessary to expedite delivery: G.S. 143-135.26, 143-128, 143-129, 143-131, 143-132, 143-134, 113A-1 through 113A-10, 113A-50 through 113A-66, 133-1.1(g), and 143-408.1 through 143-408.7.

Session Laws 1996, Second Extra Session, c. 18, s. 1.1, provides: "This act shall be known as the Current Operations Appropriations Act of 1996."

Session Laws 1996, Second Extra Session, c. 18, s. 23.4, provides: "(a) The Department of Justice, in consultation with the Office of State Construction of the Department of Administration, shall contract for and supervise all aspects of administration, technical assistance, design, construction, or demolition of facilities in order to implement the repairs and renovations of the Western Justice Academy under the provisions of this section without being subject to the following statutes and rules implementing those statutes: G.S. 143-135.26, 143-131, 143-132, 113A-1 through 113A-10, 113A-50 through 113A-66, and 113-1.1(g). The Department of Justice shall let contracts for all repairs and renovations of the Academy as soon as possible, but not later than December 1, 1996.

"The Department of Justice shall have a verifiable ten percent (10%) goal for participation by minority and women-owned businesses. All contracts for the design, construction, or demolition of facilities shall include a penalty for failure to complete the work by a specified date.

Session Laws 1996, Second Extra Session, c. 18, s. 29.5, is a severability clause.

Effect of Amendments.—The 1995 amendment, effective June 30, 1995, added subdivision (9).

The 1996 Second Extra Session amendment, effective July 1, 1996, added the language beginning "provided, further, the Director of the Budget" through the end of the first paragraph of subdivision (1).

ARTICLE 8.
County Property

Part. 1. Acquisition of Property.

§ 153A-158. Power to acquire property.

A county may acquire, by gift, grant, devise, bequest, exchange, purchase, lease, or any other

lawful method, the fee or any lesser interest in real or personal property for use by the county or any department, board, commission, or agency of the county. In exercising the power of eminent domain a county shall use the procedures of Chapter 40A. (1868, c. 20, ss. 3, 8; 1879, c. 144, s. 1; Code, ss. 704, 707; Rev., ss. 1310, 1318; C.S., ss. 1291, 1297; 1973, c. 822, s. 1; 1981, c. 919, s. 21; 1995, c. 17, s. 14.)

Local Modification.----Bladen: 1981, c. 134, s. 2; Brunswick: 1981, c. 283; Cabarrus: 1985, c. 194, s. 3; Caswell: 1981, c. 941; Columbus: 1981, c. 270; Franklin: 1981, c. 941; Gaston: 1995, c. 399, ss. 1, 2; Granville: 1981, c. 941; Halifax: 1995 (Reg. Sess., 1996), c. 706; Greene: 1995, c. 399, ss. 1, 2; Johnston: 1981, c. 459; Montgomery: 1995, c. 154, s. 3; Nash: 1995 (Reg. Sess., 1996), c. 706; Pender: 1981, c. 283; Person: 1981, c. 941; Sampson: 1993 (Reg. Sess., 1994), c. 613, s. 1; 1995, c. 399, ss. 1, 2; Union: 1983, c. 150; Vance: 1981, c. 941; Wake: 1985, c. 337; Warren: 1981, c. 941; Watauga: 1989, c. 487, s. 1; Wilson: 1995 (Reg. Sess., 1996), c. 706.

For additional local modifications to this section, see the main pamphlet.

Editor's Note.----This section and Local Modification notes have been set out above to reflect changes due to the codification of Session Laws 1989 (Reg. Sess., 1990), c. 885, ss.1, 2, and Session Laws 1991 (Reg. Sess., 1992), c. 832, s. 1; c. 848, s. 1; c. 865, s. 1, and c. 1001, s. 1.

Effect of Amendments.----The 1995 amendment, effective March 23, 1995, deleted "in other counties" from the end of the section catchline.

§ 153A-164. Joint buildings.

Two or more counties, cities, other units of local government (including local boards of education), or any combination of such governments may jointly acquire or construct public buildings to house offices, departments, bureaus, agencies, or facilities of each government. The governments may acquire any land necessary for a joint building or may use land already held by one of the governments.

In exercising the powers granted by this section, the governments shall proceed according to the procedures and provisions of Chapter 160A, Article 20, Part 1. (1965, c. 682, s. 1; 1973, c. 822, s. 1.)

§ 153A-165. Leases.

A county may lease as lessee, with or without option to purchase any real or personal property for any authorized public purpose. A lease of personal property with an option to purchase is subject to Chapter 143, Article 8. (1973, c. 822, s. 1.)

ARTICLE 3.
Contracts

§ 160A-20. Security interests.

(a) Units of local government, as defined in subsection (h), may purchase or finance the purchase of real or personal property by installment contracts that create in the property purchased a security interest to secure payment of the purchase price to the seller or to an individual or entity advancing moneys or supplying financing for the purchase transaction.

(b) Units of local government, as defined in subsection (h), may finance the construction or repair of fixtures or improvements on real property by contracts that create in the fixtures or improvements, or in all or some portion of the property on which the fixtures or improvements are located, or in both, a security interest to secure repayment of moneys advanced or made available for such construction or repair.

(c) Units of local government, as defined in subsection (h), may use escrow accounts in connection with the advance funding of transactions authorized by this section, whereby the proceeds of such advance funding are invested pending disbursement.

(d) No contract entered into under this section may contain a nonsubstitution clause that restricts the right of a unit of local government to:

(1) Continue to provide a service or activity; or

(2) Replace or provide a substitute for any fixture, improvement, project, or property financed or purchased pursuant to such contract.

(e) A contract entered into under this section is subject to approval by the Local Government Commission under Article 8 of Chapter 159 of the General Statutes if it:

(1) Meets the standards set out in G.S. 159-148(a)(1), 159-148(a)(2), and 159-148(a)(3), or involves the construction or repair of fixtures or improvements on real property; and

(2) Is not exempted from the provisions of that Article by one of the exemptions contained in G.S. 159-148(b).

(f) No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this section, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this section.

(g) Before entering into a contract under this section involving real property, a unit of local government shall hold a public hearing on the contract. A notice of the public hearing shall be published once at least 10 days before the date fixed for the hearing.

(h) As used in this section, the term "unit of local government" means any of the following:

(1) A county.

(2) A city.

(3) A water and sewer authority created under Article 1 of Chapter 162A of the General Statutes.

(4) An airport authority whose situs is entirely within a county that has (i) a population of over 120,000 according to the most recent federal decennial census and (ii) an area of less than 200 square miles.

(5) An airport authority in a county in which there are two incorporated municipalities with a population of more than 65,000 according to the most recent federal decennial census.

(5a) An airport board or commission authorized by agreement between two cities pursuant to G.S. 65-56, one of which is located partially but not wholly in the county in which the jointly owned airport is located, and where the board or commission provided water and wastewater services off the airport premises before January 1, 1995; provided that the authority granted by this section may be exercised by such a board or commission with respect to water and wastewater systems or improvements only.

(6) A local school administrative unit (i) that is located in a county that has a population of over 90,000 according to the most recent federal decennial census and (ii) whose board of education is authorized to levy a school tax.

(7) An area mental health, developmental disabilities, and substance abuse authority, acting in accordance with G.S. 122C-147.

(8) A consolidated city-county, as defined by G.S. 160B-2(1).

(1979, c. 743; 1987 (Reg. Sess., 1988), c. 981, s. 1; 1989, c. 708; 1991, c. 741, s. 1; 1993 (Reg. Sess., 1994), c. 592, s. 2; 1995, c. 461, s. 6; 1995 (Reg. Sess., 1996), c. 644, s. 2.)

Editor's Note.---Session Laws 1989, c. 708, which amended this section, in ss. 2 and 3 provides:

"Sec. 2. (a) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under G.S. 160A-20, subsections (a), (b), (c), and (f), as rewritten by this act, is hereby validated, ratified, and confirmed. Furthermore, such a contract may not be held invalid because it contains a nonsubstitution clause, or because no public hearing was advertised and held on the contract, or both.

"(b) Any contract made or entered into, prior to the date of ratification of this act, by a city, a county, or a water and sewer authority created under Article 1 of Chapter 162A of the General Statutes which would have been valid under subsection (a) of this Section 2 or under G.S. 160A-20 as it existed prior to the ratification of this act or as rewritten by this act, except that the Local Government Commission did not approve the contract, is hereby validated, ratified, and confirmed.

"Sec. 3. Nothing in this act shall be interpreted to limit or restrict the authority of cities, counties, or water and sewer authorities created under Article 1 of Chapter 162A of the General Statutes to purchase, improve, or finance the purchase or improvement of real or personal property pursuant to any other applicable law, whether general, special, or local."

Session Laws 1995, c. 461, s. 20, contains a severability clause.

Effect of Amendments.---The 1995 amendment, effective July 19, 1995, added subdivision (h)(8).

The 1995 (Reg. Sess., 1996) amendment, effective June 21, 1996, added subdivision (h)(5a).

Legal Periodicals.---For note, "Constitutional Expansion of Local Government Financing Alternatives: Wayne County Citizens Association v. Wayne County Board of Commissioners," see 70 N.C.L. Rev. 1947 (1992).

CASE NOTES

This section does not contravene N.C. Const., Art. V, § 4, which authorizes the General Assembly to regulate local government finance. Wayne County Citizens v. Wayne County Bd. of Comm'rs., 328 N.C. 24, 399 S.E.2d 311 (1991).

County's installment purchase contract for construction of a new courthouse and jail was authorized by this section. Wayne County Citizens v. Wayne County Bd. of Comm'rs., 328 N.C. 24, 399 S.E.2d 311 (1991).

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Vocational Programs within the school and outside the school. ..... §115C-159

* This session law is not included in the book.